UNITED NATIONS
General Assembly
FORTY-NINTH SESSION
Official Records

SIXTH COMMITTEE
13th meeting
held on
Wednesday, 19 October 1994
at 10 a.m.
New York

SUMMARY RECORD OF THE 13th MEETING

Chairman:	Mr. LAMPTEY	(Ghana)
later:	Mr. MADEJ (Vice-Chairman)	(Poland)
later:	Mr. LAMPTEY (Chairman)	(Ghana)

CONTENTS

AGENDA ITEM 142: MEASURES TO ELIMINATE INTERNATIONAL TERRORISM (continued)

AGENDA ITEM 157: QUESTION OF CRITERIA FOR THE GRANTING OF OBSERVER STATUS IN THE GENERAL ASSEMBLY (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/49/SR.13
1 November 1994
ENGLISH
ORIGINAL: SPANISH

/...

The meeting was called to order at 10.45 a.m.

AGENDA ITEM 142: MEASURES TO ELIMINATE INTERNATIONAL TERRORISM (continued) (A/49/257 and Corr.1 (French only) and Add.1 and 2; A/C.6/49/L.1; A/49/287-S/1994/894, A/49/422-S/1994/1086, A/49/498-S/1994/1150 and A/49/510-S/1994/1158)

1. Mr. MARTENS (Germany), speaking on behalf of the European Union and Austria, reiterated his support for General Assembly resolution 46/51 of 9 December 1991, on "Measures to eliminate international terrorism". No cause, however legitimate, could justify acts of terrorism; furthermore, terrorist acts could only detract from such a cause, negatively affect relations among States and jeopardize the international order.

2. He condemned the recent act of terrorism perpetrated in the centre of Tel Aviv, the latest of a number of equally despicable acts, such as the explosion at the headquarters of the Argentine Jewish Mutual Association in Buenos Aires on 18 July and the attack against the Israeli Embassy in London on 26 July, which had left many victims in their wake. In the statement by its President on 29 July 1994 (S/PRST/1994/40), the Security Council had condemned the terrorist attacks in Buenos Aires and London and had demanded an immediate end to all terrorist activities. The European Union and Austria deplored and condemned those attacks and trusted that no State or Government had been involved in their planning or perpetration.

3. On several occasions the Security Council had had to address such criminal terrorist practices as the taking of hostages, the bombing of urban centres and political assassinations. It had adopted resolution 635 (1989), in which it voiced its deep concern at all acts of unlawful interference against the security of international civil aviation, such as the attacks against Pan Am flight 103 and UTA flight 772, which had resulted in the loss of 400 lives. It was vital to reaffirm once again Security Council resolutions 731 (1992), 748 (1992) and 883 (1993).

4. Given the frequency and gravity of terrorist activities world wide, States must continue to coordinate their responses to terrorism as closely as possible in order to combat it effectively. Information exchange and close cooperation would strengthen the capacity of Governments to prevent acts of terrorism and to apprehend and prosecute or extradite suspected perpetrators. The campaign against terrorism must be based on respect for international law, including international human rights instruments, thereby contributing to the progressive elimination of the causes underlying such acts. More States must be encouraged to accede to conventions against terrorism, in particular those mentioned in the fourth preambular paragraph of General Assembly resolution 46/51. Only that would help ensure that the perpetrators of terrorist acts would not find refuge in any State.

5. Mr. SMEJKAL (Czech Republic) reaffirmed his categorical opposition to any forms or manifestations of international terrorism, adding that no explanation

/...

of a social or economic nature could justify or legitimize that crime. Terrorism was on the increase, despite momentous changes in recent years, and there was increasing evidence of the interdependence between terrorism and other criminal acts, such as drug trafficking, the arms traffic and the smuggling of nuclear material.

6. In combating terrorism the international community could already draw on a number of international, regional and bilateral legal instruments; at the global level there were some 10 international conventions, which, despite their sectoral nature, were sufficiently flexible to allow for truly universal participation. He also noted recent events in international law, such as the elaboration of an international convention dealing with the safety and security of United Nations and associated personnel, to which the Czech Republic had made an active contribution. The relevant Working Group had completed the text of the draft convention, which he hoped would be favourably received.

7. At the same time, he doubted the usefulness of convening a conference to consider the issue of international terrorism or the establishment of a working group for that purpose, in view of the problems which would arise in formulating a comprehensive definition of international terrorism. Most likely, opinions would differ on criteria for the distinction between international terrorism and the activities of national liberation movements. On the other hand, support should be given to the draft declaration on measures to eliminate international terrorism.

8. The essential factor in the campaign against international terrorism was the political will and determination of States. States must refrain from giving any form of support to terrorist activities and must endeavour instead to strengthen international cooperation in combating such acts, so that their perpetrators would be unable to seek refuge behind inter-State frontiers.

9. Mr. Madej (Poland) took the Chair.

10. Mr. ORDZHONIKIDZE (Russian Federation) conveyed, on behalf of the States of the Commonwealth of Independent States, condolences to the people and Government of Israel on the recent terrorist attack in Tel Aviv and expressed his vigorous condemnation of that act. Grave concern was caused by the resurgence of terrorist activities around the world, which undermined the principles of the Charter of the United Nations, had a negative impact on international relations, jeopardized the security of States, destabilized their domestic policies and impeded economic and social development, since the perpetrators of those acts would resort to any form of intimidation, destruction and pressure in pursuit of their aims. The internationalization of modern terrorism directly affected the international community and placed that issue among the major problems of the end of the twentieth century, along with arms smuggling and trafficking, the degradation of the environment and acquired immunodeficiency syndrome (AIDS). He noted the increasingly close links between terrorism and drugs trafficking, links which flourished in a climate of armed conflict and political instability. For their part, the States of the Commonwealth of Independent States had set

about establishing a system of protective measures to combat drug trafficking, based on judicial assistance agreements and mechanisms.

11. The States of the Commonwealth of Independent States vigorously condemned terrorism in all its forms and stressed the need for intensified anti-terrorism measures and international cooperation within the United Nations. The ending of the cold war and of East-West confrontation had opened up positive prospects in that regard. The time had come to put into practice the anti-terrorism measures promoted by the United Nations, unobstructed by political or ideological considerations. To that end, there was an urgent need to strengthen the international legal framework for the campaign against terrorism. Accordingly, more States should endorse the relevant multilateral instruments, including the draft statute for an international criminal court and the draft Code of Crimes against the Peace and Security of Mankind.

12. Nuclear terrorism was another issue of concern, as evidenced by the recent cases of the smuggling of radioactive material. States should cooperate in elaborating an instrument to prohibit and punish terrorist acts perpetrated with nuclear arms and material, together with a document on measures for the protection of chemical and biological material against terrorist attacks.

13. International recommendations on a mechanism for reciprocal assistance among States for the apprehension and detention of criminals should be elaborated on the basis of international conventions dealing with the various manifestations of terrorism. A model agreement on international cooperation in combating terrorism could be drafted in the United Nations Committee on Crime Prevention and Criminal Justice.

14. There should also be closer cooperation between the United Nations and the appropriate specialized agencies, such as the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO) and the International Atomic Energy Agency (IAEA), through the establishment, within the Secretariat, of a Unit responsible for inter-State coordination of the political, legal and technical aspects of the campaign against terrorism. That would make possible the creation of a global system for monitoring terrorist activities, the preparation of a comprehensive analysis of the phenomenon and the elaboration of useful mechanisms for all States. To that end, the United Nations could, for example, organize regional and international symposiums for the heads of national anti-terrorism bodies, prepare studies on the implementation of the appropriate conventions, the prosecution of terrorists and the sentences handed down, draw up a list of laws and national, regional and bilateral agreements on the topic and provide technical assistance to States in combating terrorism.

15. There was also a need for action by the international community to heighten public awareness of the harmful nature of terrorism, which should be considered a crime and punished as such. To that end, the mass media could organize a world-wide information campaign to mobilize public opinion. That proposal could form the subject of a recommendation to be prepared by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

16. In conclusion, the Commonwealth of Independent States hoped that the United Nations, at its current session, would adopt a strong decision on the establishment of a mechanism for constructive cooperation among States in combating terrorism.

17. Mrs. FLORES (Uruguay) said that terrorism, because of its transnational character, was harmful to individuals, States and the international community.

18. Over the years terrorism had been condemned in General Assembly resolutions, recommendations of the Ad Hoc Committee on International Terrorism, annual reports of the Secretary-General and Security Council debates and decisions. Noteworthy, too, was the work of the International Law Commission (ILC) on the draft Code of Crimes against the Peace and Security of Mankind, article 24 of which referred to international terrorism, and on the draft statute for an international criminal court.

19. At the regional level the matter had been dealt with in the Declaration of São Paulo and in the declaration adopted by the eighth Presidential Meeting of the Rio Group, which strongly condemned all terrorist attacks and called upon the international community to combat them.

20. Uruguay strongly condemned all forms of terrorism and had ratified a series of international conventions dealing with various aspects of the issue. In that connection, it was essential to increase international cooperation in the area of prevention, for which purpose it was important to exchange information. Cooperation should also be strengthened at the regional and subregional levels among national anti-terrorism bodies by creating data banks, harmonizing domestic legislation with a view to the effective application of universally accepted principles and norms, and, in the framework of the United Nations system, setting up a centre for issues relating to terrorism and conducting research on comparative law.

21. Uruguay had no objection to the convening of an international conference to elaborate a convention which would define terrorism and examine its causes especially since that did not rule out the adoption of urgent measures or cooperation among States to prevent terrorist acts, in accordance with General Assembly resolution 48/122 and decision 48/411. As long as delegations had not reached a consensus in that regard, it was best to adopt specific measures which would consolidate issues on which there was agreement and contribute to the elaboration of an instrument acceptable to the entire international community.

22. Mr. Lamptey (Ghana) resumed the Chair.

23. Mr. GUILLÉN SALAS (Peru) said it was unfortunate that terrorism and the human rights violations to which it gave rise were increasing more rapidly than the measures adopted by the international community to combat it.

24. In its resolution 48/122 of 20 December 1993, the General Assembly had unequivocally condemned all acts of terrorism, noting their impact on respect for human rights. Nevertheless, in view of the proliferation of terrorist acts

/...

in various parts of the world, the General Assembly should adopt a broad, comprehensive declaration in which it would condemn, as criminal and unjustifiable, all acts, methods and practices of terrorism, wherever and by whomever committed. No cause, reasoning or pretext of a political, religious, ideological or any other nature, could be invoked to justify terrorism. There were no justifiable acts of terrorism, and any text which implied a distinction between those acts or any proposal in that direction would be unacceptable.

25. Peru was successfully completing the process of eradicating a genocidal, unpopular movement which had resulted in loss of human life and property; that would not, however, cause it to forget how important it was for the international community to recognize the right to self-defence of any people attacked in that manner. Human rights crimes and violations in Peru had been denounced by major human rights organizations in the country and by other non-governmental human rights organizations such as Amnesty International.

26. It was to be hoped that Member States which were sincerely committed to defending the purposes and principles of the Charter of the United Nations would speak out in such a fashion and would define their position before the international community.

AGENDA ITEM 157: QUESTION OF CRITERIA FOR THE GRANTING OF OBSERVER STATUS IN THE GENERAL ASSEMBLY (continued)

27. The CHAIRMAN, referring to the establishment of the working group on the question of criteria for the granting of observer status in the General Assembly, announced that the working group would be composed of the following members: Argentina, Australia, Cameroon, China, France, Guyana, India, Nigeria, Poland, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America, under the chairmanship of India (Vice-Chairman of the Committee). While any delegation was free to participate in the discussions, the working group would be responsible for drafting the document and submitting it to the Committee.

28. Mr. POLITI (Italy), supported by Mr. RABBANI (Pakistan), Mr. GARCÍA (Colombia) and Mr. MAIGA (Mali), said that while he understood the Chairman's reasons for suggesting the creation of a small working group to consider the question of the criteria, he would prefer an open-ended group so that all delegations could make their views known and reach a consensus on the issue. In the event that a restricted working group was set up, he wished to know if his country could become a member of it.

29. Mr. YOUSIF (Sudan), joined by Mr. MWANGI (Kenya) and Mr. ODEVALL (Sweden), said that he would like to know on what basis the members of the working group had been selected: his delegation had intended to join the group and had not been consulted.

30. Following a procedural debate in which Mr. CHATURVEDI (India), Mr. YOUSIF (Sudan), Ms. SAEKI (Japan), Ms. SEMGURUKU (United Republic of Tanzania), Mr. IBÁÑEZ (Peru), Mr. SIDI ABED (Algeria), Mr. CALERO RODRIGUES (Brazil),

/...

Mr. NUBARAK (Egypt), Mr. MAIGA (Mali), Miss BOUM (Cameroon) and Mr. MARTENS (Germany) participated, the CHAIRMAN explained that in order to determine the composition of the working group, he had held consultations with the Bureau and with some delegations from the various regions, since he had not been bound to consult with all the delegations. He reiterated that any delegation could participate in the deliberations of the working group which, although restricted in membership, would give due regard to all views in the draft it would submit to the Committee. The procedure he had suggested was in accordance with the Committee's traditions. In any event, it was up to the Committee to decide, and as it appeared from the discussion that the majority of delegations preferred an open-ended group, he was prepared to withdraw his suggestion. Accordingly if he heard no objections, he would take it that the Committee wished to establish an open-ended working group, to be chaired by Mr. Chaturvedi (India).

31. It was so decided.

The meeting rose at 12.10 p.m.

UNITED NATIONS
General Assembly
FORTY-NINTH SESSION
Official Records

SIXTH COMMITTEE
14th meeting
held on
Thursday, 20 October 1994
at 10 a.m.
New York

SUMMARY RECORD OF THE 14th MEETING

Chairman: Mr. LAMPTEY (Ghana)

CONTENTS

AGENDA ITEM 142: MEASURES TO ELIMINATE INTERNATIONAL TERRORISM (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/49/SR.14
4 November 1994
ENGLISH
ORIGINAL: SPANISH

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 142: MEASURES TO ELIMINATE INTERNATIONAL TERRORISM (continued) (A/49/257 and Corr. 1 (French only) and Add.1 and 2; A/C.6/49/L.1; A/49/287-S/1994/894, A/49/422-S/1994/1086, A/49/498-S/1994/1150, A/49/510-S/1994/1158, A/49/528)

1. Mr. YASSIN (Sudan) said that his Government reiterated its condemnation of all forms of terrorism as criminal acts targeting the lives of innocent people and destroying their property, systematically creating terror and undermining the sovereignty and territorial integrity of States, and threatening international peace and security. Sudan, which complied fully with all its obligations under international law, in particular the duty to refrain from organizing, instigating or encouraging terrorist activities in third countries, had welcomed General Assembly resolution 42/159, which dealt, inter alia, with measures to prevent international terrorism and the distinction between terrorism and the struggle of peoples for national liberation. It had also acceded to several international instruments such as the International Convention against the Taking of Hostages, the Convention for the Suppression of Unlawful Seizure of Aircraft, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

2. Sudan had always endorsed the measures and decisions on terrorism adopted by the General Assembly. At the forty-eighth session it had co-sponsored resolution 48/122 on human rights and terrorism and had firmly supported decision 48/411 on measures to eliminate international terrorism; earlier, it had also supported resolution 44/51 on the protection and security of small States and resolution 46/51, also on measures to eliminate international terrorism.

3. On the specific subject of international cooperation he recalled that on 15 August 1994 the Sudanese security authorities, in cooperation with the French authorities, had arrested the terrorist Ilich Ramírez, a Venezuelan national known throughout the world as Carlos, and had extradited him to France. The arrest and extradition of Carlos was a clear example of Sudan's cooperation with France in the fight against terrorism.

4. Turning to the problem of the definition of terrorism, he said that, firstly, the classification of States, without evidence, as terrorist States or States sponsoring terrorism constituted interference in their political, economic, social and cultural development and, as such, clashed with one of the basic principles of contemporary international law - the principle of non-intervention - embodied and developed by the General Assembly in resolutions 2131 (XX) on the inadmissibility of intervention in the domestic affairs of States, 2625 (XXV) containing the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, and 36/103, the

/...

annex of which contained the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States. It must be emphasized in that regard that the indirect intervention to which those resolutions referred also had to do with the issue of terrorism and State-sponsored terrorism. Sudan had itself been a victim of gross violations of human rights by secessionist groups which often received support and arms from abroad.

5. Secondly, it was clear that a definition of terrorism and international terrorism was indispensable if the international community was to eliminate terrorism and its devastating consequences. It was essential to deal with the various forms and manifestations of terrorist acts within the framework of a precise definition and to avoid exploitation of the term "terrorism" for political purposes. The International Law Commission was more than qualified to propose to the Committee, to an international conference or to any other relevant body a draft convention on the definition of international terrorism and measures to eliminate it. Until such a definition was formulated every State would maintain its own concept of terrorism, and Sudan's concept was that the term "international terrorism" embraced the following ideas: (1) an unjust accusation of terrorism levelled without proof against a State or a person or group of persons and jeopardizing their interests or interfering in their political, economic, social or cultural development should be regarded as a form of intellectual terrorism; (2) acts contrary to international law, such as organizing, fomenting, financing, inciting or tolerating subversive terrorist or armed activities aimed at the overthrow of the regime of another State, or acts encouraging, supporting or promoting rebellious or secessionist activities in other States, or the training, financing and recruitment of mercenaries, or acts directly or indirectly threatening the territorial integrity and security of States or endangering their constitutional order should also be regarded as forms of terrorism.

6. Furthermore, in the fight against terrorist acts it was equally important to draw a distinction between terrorism as such and the legitimate right of peoples subject to the yoke of imperialism, racism or foreign domination to fight against such oppression, exercise their right to self-determination and self-defence, live in freedom and independence, and determine their own choices and the political regime to which they aspired.

7. In its statement at the forty-eighth session of the General Assembly the Sudanese delegation had referred at length to the issue of extremism or fundamentalism and to the mistake of associating them with Islam. It now reiterated its position and endorsed the views stated in the General Assembly a few days earlier by the Crown Prince of Jordan, Elhassan Bin Talal, with regard to the distortion of the image of Islam.

8. The Sudanese delegation welcomed the report of the Secretary-General (A/49/257) containing the views and proposals submitted by Governments in accordance with paragraph (a) of decision 48/411. It was also participating actively in the informal consultations on the item and hoped that the efforts made so far would facilitate a consensus on a declaration on measures to eliminate international terrorism. However, such a declaration alone would not

/...

be sufficient to solve the problem because the underlying causes of national and international terrorism included economic, social and political factors, feelings of injustice, and the deprivation of peoples, groups or individuals of their fundamental rights. Other practical measures aimed at the gradual elimination of the fundamental causes of terrorism would therefore be needed; accordingly, the appeal made by the European Union and Austria in that connection was welcome.

9. The use of the term "international terrorism" for political ends would only impede the collective efforts to secure the speedy elimination of terrorism and compliance with the purposes and principles of the Charter of the United Nations, especially those relating to the promotion of friendly relations among States, non-interference in the internal affairs of States, and respect for their sovereignty.

10. Mr. AL-BAKER (Qatar) said that Qatar condemned all acts of terrorism, wherever and by whomever committed, whether by persons, States or groups, because they violated the norms of international law and the values cherished by civilized States. Such acts infringed the human rights of innocent civilians, jeopardized friendly relations among nations, undermined the political and economic institutions of States and threatened their internal security, territorial integrity and economic and social development.

11. He expressed the hope that recent international events would make it easier to combat terrorism through economic development, the improvement of living standards and the solving of problems related to self-determination and the independence of peoples, as in the case of South Africa, where the black majority could at last enjoy the rights that had been denied them. One hopeful sign was that some national liberation movements which had previously used violent, aggressive methods had abandoned that tactic and had renounced terrorism as a way to achieve national liberation and re-establish their rights. The Irish Republican Army and other liberation groups had recognized that terrorism did not serve their cause, and that it was better to resort to peaceful dialogue. Indeed, the fight against terrorism had become increasingly complex because terrorists had established ties with illicit drug trafficking, money laundering and arms smuggling. The United Nations and its specialized agencies had had to address all those problems.

12. An item on terrorism had been included for the first time in the General Assembly's agenda at its twenty-seventh session, held in 1972, and since then the Assembly had been adopting resolutions, decisions and recommendations aimed at eliminating terrorism and combating all its manifestations at the national, regional, subregional and international levels. At the current session, the Sixth Committee was considering a draft declaration on measures to eliminate international terrorism, which would supplement previous resolutions. Such a declaration would help to strengthen the legal framework of the counter-terrorist effort. The draft declaration made reference to the relevant international conventions and to bilateral, regional and subregional agreements which called for cooperation among States, and to measures which should be adopted to achieve their objectives. It also encouraged States to review the

scope of the existing international provisions on terrorism with the aim of establishing a comprehensive legal framework covering all aspects of the matter. That task should be carried out by the Committee and the International Law Commission, and should be based on firm juridical principles aimed at strengthening cooperation among States and facilitating the exchange of information and data to help lay the foundations for a new international order. States should recognize that, in order to deal with the problem of terrorism, there was a need for greater solidarity to allow for establishing a humanitarian society based on consensus and understanding.

13. Mr. ANSARI (India) said that it was very important for the international community to devise effective measures to combat international terrorism, since it was a new weapon of mass destruction and was being deliberately spread by some countries. In that regard, it was imperative for Member States to negotiate a comprehensive, binding convention. Such a convention would replicate the relevant provisions of existing international conventions which addressed terrorism in a piecemeal fashion. In its decision 48/411, the General Assembly, aware of the need to take effective steps to eliminate acts of terrorism requested the Secretary-General to seek the views of Member States on the matter. India, whose views were stated in document A/49/257, felt that the Committee should consider the item annually, and should form a working group to identify widely accepted general principles which were incorporated in international and regional instruments to combat terrorism. On that basis, the group should elaborate concrete measures and explore the possibility of drafting a comprehensive convention against terrorism.

14. Mr. ABDELLAH (Tunisia) said that differences of views had arisen in the Committee in recent years with regard to an issue of great importance, the adoption of measures to eliminate international terrorism. The matter was not merely national in scope, but rather was a threat to international peace and security. More and more frequently, terrorist acts committed in one country were being organized in another, where the perpetrators or instigators took refuge, flouting the most elemental norms of hospitality. Such terrorists committed acts which not only hurt their countries of origin but also affected relations between the latter and the host country. Consequently, before considering giving refuge to anyone, a State should consult with the State of origin and with the International Criminal Police Organization (INTERPOL) to be sure that the person was not implicated in terrorist activities. States should also ensure that persons seeking asylum were not engaged in activities that provoked violence in their countries of origin. States should refrain from organizing, encouraging, participating in or acquiescing in acts of terrorism in the territory of other States.

15. Tunisia, which spared no effort in its opposition to acts of terrorism, had taken steps at the domestic level, had acceded to the relevant international conventions and had collaborated closely with other States. The elimination of international terrorism depended on the political will of States to strengthen their cooperation in that field. An example of such political will was the adoption, at the most recent summit meeting of the Organization of African Unity (OAU), held in Tunis, of a code of conduct in which the African States

/...

agreed to intensify their cooperation in the struggle against international terrorism. Such strengthening would include, in particular, the adoption and implementation of concrete measures.

16. The draft declaration before the Committee fit in with the same general purpose, since it listed a series of practical measures to strengthen cooperation. It also made it possible to address the issue with complete freedom, without being bound by the resolutions already adopted. In any case, the declaration was only a first step, which should be followed by the adoption of a convention against terrorism.

17. Lastly, he felt that some consideration should be given to the proposal on the establishment of an international surveillance system against terrorist activities.

18. Mr. ODEVALL (Sweden), speaking on behalf of the Nordic countries, said that there was broad agreement among States on how to tackle many aspects of terrorism. All acts of terrorism were considered illegal at the national and international levels. A whole range of international conventions covered a multitude of terrorist acts that were unequivocally and strongly condemned by the States parties. Thus, the international community did not lack a foundation for continuing its efforts to eliminate international terrorism. The Nordic countries had emphasized the importance of applying conventions already available when combating terrorism, rather than trying to create new instruments. They therefore strongly opposed the idea of convening a conference on the topic, which might give the impression that existing rules were insufficient. An effort to define terrorism would risk diverting attention from vital issues. In order to achieve tangible results, States should adhere to existing international conventions on terrorism and should strengthen international cooperation to ensure that perpetrators were brought to justice. All measures to eliminate international terrorism should, however, be in conformity with international law, including international human rights instruments. The Nordic countries condemned terrorism in all its forms, regardless of the justifications given for them. However, not all States were prepared to combat terrorism, although they had the means.

19. Mr. AL-ATTAR (Syrian Arab Republic) condemned all terrorist acts, methods and practices, because they were attempts on the lives of innocent people and violated State sovereignty and territorial integrity. His country, which had been one of the first to suffer from terrorism, had demonstrated its opposition to that phenomenon by participating directly and actively in the freeing of hostages and detained persons. It had acceded to the Tokyo, The Hague and Montreal conventions on terrorism and its legislation imposed sanctions on the commission of terrorist acts.

20. There was a need to proceed to the convening of a conference in order to define terrorism and study its causes. That would end the conceptual confusion existing between terrorism and the struggle of peoples subjected to colonial and racist regimes and foreign occupation or other forms of colonial domination. The Syrian Arab Republic had welcomed the adoption of General Assembly

/...

resolution 42/159, which recognized that the effectiveness of the struggle against terrorism could be enhanced by the establishment of a generally agreed definition of international terrorism, and General Assembly resolution 44/29, which constituted a landmark by expanding international cooperation in the struggle against terrorism on the basis of the Charter and international law concerning cooperation among States. At the forty-second session of the General Assembly, the Committee had agreed to convene a conference in order to define terrorism. However, certain States had opposed the holding of such a conference, because they considered it more appropriate to promote accession to existing treaties on terrorism and international cooperation for the exchange of information and the extradition of the perpetrators of terrorist acts. Experience showed that, despite the growing number of conventions on that subject, terrorism was constantly on the rise and was devising new methods, as witnessed in the phenomenon of violence against foreigners. In addition, there was a link between drug-trafficking and terrorism. All those factors required that States should unite their efforts with a view to preparing a general international convention based on other relevant instruments. The International Law Commission should undertake to draft the convention, the adoption of which would be one of the most important achievements of the United Nations Decade of International Law.

21. The Middle East, whose peoples had lived for centuries in a climate of tolerance and peace, was now a focus of violence which threatened international peace and security. That stemmed from the occupation to which a part of the region was subjected. The vicious circle of violence, death and destruction could be broken only if the peace process moved forward and if a comprehensive and just solution was reached.

22. Mr. RABBANI (Pakistan) strongly condemned all acts of terrorism perpetrated by individuals, groups or States, irrespective of the motivation. Pakistan had supported the adoption of measures by the United Nations, the South Asian Association for Regional Cooperation and other international organizations such as the International Civil Aviation Organization; in addition, it was a party to international conventions dealing with various aspects of terrorism. During the past decade, Pakistan had been the largest single target of terrorism sponsored from across a State's borders. In 1987, for example, 3,000 terrorist acts of that kind had occurred, 2,000 of which had taken place in Pakistan. Those acts had been planned by three States, including one of its neighbours which had recently become a convert to the crusade against international terrorism.

23. In the light of the rise in terrorist acts against innocent persons in different parts of the world, it was imperative to invoke General Assembly resolutions, particularly resolution 46/51, in order to set up a basic framework within which the Assembly could continue building mechanisms to tackle and eradicate terrorism. The complex phenomenon of terrorism could be defined as the use or threat of use of force or violence against innocent people, irrespective of the underlying motivation. It could be categorized as individual terrorism, group terrorism, State terrorism and international terrorism. The worst of those was State terrorism, which could be described as the ruthless use of force by an occupying Power in order to suppress the right

/...

of peoples to self-determination. The following were acts of terrorism: the criminal actions carried out by covert agencies of a State against the civilian population of another State in an attempt to subvert and sabotage that State, actions to which Pakistan had been subjected during the Afghan liberation struggle; acts of violence committed by a State against its own people to curb their civil, political and economic rights; acts of occupation and aggression by a State seeking to suppress the freedom of another people; the firing of mortar shells into a market in Sarajevo, killing hundreds of innocent persons; the desecration of places of worship by occupation forces; the acts of violence committed in Kashmir in order to punish and humiliate the entire community; the use of repression by occupation forces in order to break the morale of a people struggling to exercise its right to self-determination; the killing, in a single month, of 132 persons in custody in Kashmir; the barring of hospitals from treating the victims of torture; and the burning of village after village in order to intimidate the civilian population, for no crime except their support for the struggle for self-determination.

24. The international community had been constrained to distinguish between acts of terrorism and the struggle of peoples under colonial and racist regimes and other forms of foreign domination and occupation, because colonial and occupying Powers had always sought to justify the suppression of that struggle by depicting it as "terrorism". The distinction emanated from the need not to compromise one of the most fundamental human rights - the right to be free. That approach had been upheld at the Conference of Heads of State or Government of Non-Aligned Countries held in Jakarta in 1992, which had clearly and unequivocally stated that the struggle for self-determination did not constitute terrorism.

25. Pakistan considered it essential to adopt specific measures against the various manifestations of terrorism, such as hijacking, hostage-taking and crimes against internationally protected personnel. All those manifestations must be eliminated through the struggle of the peoples and strict adherence to the principles of the Charter and international law.

26. Mr. LAMAMRA (Algeria) said that in its decision 48/411 of 9 December 1993 the General Assembly had given further impetus to the consideration of the question of international terrorism by proposing the adoption of practical measures to strengthen international cooperation and achieve greater effectiveness in the fight against terrorism.

27. One of the most effective ways of strengthening that fight, in the framework of the Committee, would be the adoption of a general international convention on the prevention and elimination of all acts of terrorism. In international positive law there were a dozen conventions relating to various aspects of terrorism but there was no general text that made it possible to address terrorism as a whole in a comprehensive and coherent manner. A general convention of that type would also provide a legal framework in which to address the new forms of terrorism that were not covered by existing sectoral conventions and that were outside the scope of existing international positive

/...

law. The international community clearly had an interest in filling this gap in the law as quickly as possible.

28. In order to accomplish this task, Algeria proposed that a working group be set up in the Committee in order to draw up a framework convention for the prevention and elimination of all acts of terrorism. That proposal was in keeping with the Committee's usual practice, and with its mandate as the body responsible for directing the process of the progressive development and codification of international law.

29. His delegation was pleased at the manner in which the question of international terrorism had been tackled that year, through informal consultations to draw up a draft declaration on measures to eliminate international terrorism. In view of the positive spirit in which those consultations were taking place it was to be hoped that the results of the consultations would do justice to the importance of the question. Considerable progress had been made in the elaboration of a draft declaration and it would be unfortunate if, due to lack of time, the consultations did not culminate in the adoption of the declaration; the latter would be a promising new development in the consideration of a question which the General Assembly had been considering for more than 20 years. Accordingly, it would be advisable for the Committee to consider the possibility of holding additional informal consultations to finalize the draft, as a clear sign of the United Nations firm determination not only to reaffirm its unequivocal condemnation of terrorism, whatever its form and by whomever it was committed, but also to promote practical and effective measures to eradicate terrorism.

30. Starting from the lofty concept which his country had of the role of international law in strengthening international cooperation for the benefit of peace, he considered that the Committee should respond promptly to, or even anticipate, the pressing needs felt by the international community. The preparation and implementation of an international strategy for dealing with the present-day challenge of terrorism would be part of that role. No one could assume political and moral responsibility for delaying, even for defensible reasons, the formation of an initial basic consensus on the practical measures for strengthening international cooperation to eliminate terrorism. Algeria was paying dearly for its struggle against the causes and manifestations of terrorism, and it would spare no effort to see that such an international strategy emerged at the current session.

31. Mrs. SAEKI (Japan) said that international terrorism was a major destabilizing factor which undermined the framework of the community of States and international peace and security. Japan was deeply concerned by the growing trend - evident all over the world - towards hate, intolerance, xenophobia and extremism, which threatened not only the security of States but also the right of individuals to freedom of thought and expression. Japan was committed to combating terrorism in all its forms, whatever the motives of the perpetrators, and it fully supported General Assembly resolution 46/51, which unequivocally condemned, as criminal and unjustifiable, all acts, methods and practices of terrorism.

/...

32. On the domestic front, it was essential that each State maintain a clear and consistent policy against all forms of terrorism and fulfil its international obligations through strong and effective measures. Accordingly, Governments should be guided by a firm respect for human rights, fundamental freedoms and the rule of law, in the recognition that terrorism was incompatible with the principles on which democracy was based. Any measure taken by States should be in strict compliance with the relevant rules of international law, including those relating to protection of human rights.

33. On the international front, it should be made clear that the international community would not tolerate encouragement of or acquiescence in terrorist activities by any State. Since terrorism did not respect international boundaries, it was necessary to establish an international cooperation regime to ensure that the perpetrators were denied sanctuary and would not evade punishment. To that end, the international community had sought to consolidate the legal framework through conventions and protocols thus broadening the range of specific acts to be prevented. Japan believed that approach to be effective. She underscored the need to promote the universality of those conventions and protocols, saying that it was important that they be complied with strictly and in good faith. Japan therefore once again urged all Member States to fully discharge their obligations in that area.

34. The Committee should adopt a constructive and pragmatic approach that would deter and prevent specific acts of international terrorism and that would help States and relevant international organizations to take practical measures to combat such crimes. Her delegation welcomed the discussion that was taking place in the Working Group on the draft declaration on measures to eliminate international terrorism. The draft demonstrated the strong will of Member States to combat terrorism, and would be a good basis for consensus.

35. Mr. PREDA (Romania) said that his country had always unequivocally condemned all acts, methods and practices of terrorism wherever and by whomever they were committed, irrespective of their purpose and motivation. The international community should consider any terrorist act an outrage. Accordingly all States must react by strengthening their cooperation in order to root out terrorism.

36. All States which had not yet done so should consider the possibility of becoming party to the international conventions relating to various aspects of terrorism. Romania was prepared to fulfil all its commitments and to cooperate constructively with all States to that end. It was time to develop and implement effective and specific measures in that area, including the negotiation of special agreements on a bilateral, regional or multilateral basis with specific obligations to refrain from organizing, instigating or sponsoring terrorist acts in other States, or from acquiescing in or encouraging such activities in one's own territory. In addition, contracting parties could undertake to intensify cooperation by exchanging relevant information so as to strengthen their capacity to prevent acts of terrorism and to apprehend and prosecute or extradite persons suspected of having perpetrated such acts. Such bilateral or regional agreements could be one of the best ways of combating

/...

terrorism since their provisions would focus on specific acts of terrorism committed in specific areas. He agreed with those delegations that believed that such an approach was the right one and that new international legal instruments would be extremely helpful in the fight against terrorism.

37. It was also very important to educate public opinion through the media. In addition, the United Nations and relevant specialized agencies could promote widespread cooperation in preventing and combating terrorism by increasing public awareness of the consequences of terrorism.

38. It seemed unlikely that convening an international conference to define terrorism and to differentiate it from the struggle of peoples for national liberation would produce practical results. Defining terrorism in specific terms presented insuperable obstacles as experience had already shown. Any attempt to agree on a definition not only was doomed to fail but might jeopardize the elements of consensus that had so painfully been agreed during the past few years.

39. As a democratic country fully attached to the ideals embodied in the Charter, Romania was making its contribution to the achievement of mankind's aspirations and to the answers which must be given to the challenges facing the contemporary world in which international cooperation should be governed by law. As a Romanian diplomat, Nicolae Titulescu, had said in his time, only when the law shone in man's soul, as a self-imposed obligation that was one with organized freedom, only then would mankind be saved.

40. **Ms. GOLAN** (Israel) said that, with fresh memories of the recent murderous attack in Israel, which had killed 22 innocent people and injured 48 and of the unspeakable attack on the headquarters of the Argentine Jewish Mutual Aid Association in Buenos Aires, which had taken the lives of 100 persons and wounded another 200, the Committee was once again considering the issue of international terrorism. How long must the international community debate about international terrorism, attempt to define it, try to understand it? How long must the cries of the victims and the sight of their shattered bodies be forgotten in the flurry of semantic and legalistic polemics?

41. Israel supported the decision adopted by the Committee the previous year to focus its attention on measures against international terrorism, rather than working out a precise definition of terrorism. International terrorism was a threat to the health of the world order and must be confronted in the manner that a physician confronted threats to the health of the body; he was less concerned with finding a precise definition of the word "disease" and more with devising means to combat bacteria that wreaked havoc with health. Thus, too, the international community must be concerned with devising means to prevent international terrorists from jeopardizing the peace and security of the world.

42. In order for an international terrorist to function, he must be able to move freely from country to country, must be able to acquire his tools of destruction and communicate across borders. It was in those areas that cooperation between States should play a major role. The United Nations,

/...

through its specialized agencies, had already acted to hinder the movements of terrorists. Treaties had been drafted, subsequently adopted by the majority of States, limiting the capacity of terrorists to transport weapons and explosives from one country to another. IAEA had succeeded to a large extent in curbing illicit traffic in radioactive materials. However, more should be done along those lines, and the specialized agencies of the United Nations should draft international agreements that would then be ratified by all Member States. That would limit the access of terrorist individuals or organizations to the means necessary to carry out their acts.

43. It was now technologically feasible to create unforgeable passports and work papers. Cooperation between the appropriate authorities of States in defining a uniform standard for such documents might be worth considering. Another means of hampering the ability of terrorists to travel would be to create an international network of on-line databases allowing border police immediate access to data about suspects. Furthermore, it was imperative to strengthen the international law enforcement framework to prevent terrorists escaping from punishments. In addition, comprehensive action was required against States that employed terrorism, whether directly or through the sponsorship of terrorist groups. It was today clear that, without the financial and logistic support of certain States and without their provision of a safe haven for terrorists, the danger of international terrorism would be greatly reduced, as without State support it was unlikely that such terrorist actions could be performed.

44. In spite of the international community's growing awareness of the dangers of international terrorism, acts of terrorism were still performed in all parts of the world, and there was an urgent need to coordinate and to adopt effective measures to combat and eliminate international terrorism. In that regard, he supported the adoption by the Committee of a declaration unequivocally condemning all acts and practices of terrorism, wherever and by whom committed, without any exception.

45. Mr. PAVA (Colombia) said that the debates on the need to combat the acts, methods and practices of international terrorism were based on the common denominator of rejection and absolute lack of justification of such acts. Terrorism had ramifications that transcended State borders and was associated with other crimes such as drug trafficking, illegal traffic in chemical precursors and arms and money laundering. He stressed the need for all States to cooperate in the struggle against terrorism at the bilateral, regional and multilateral levels and for the United Nations to promote such cooperation. Colombia, which had suffered the consequences of terrorism, undertook to make its contribution at the international level, in full observance of the principles and norms of international law.

46. One characteristic of terrorism was the violation of human rights and fundamental freedoms. Various bodies had pronounced themselves on that subject: the Inter-American Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights and the Ministers for Foreign Affairs of the Movement of Non-Aligned States had

/...

reiterated their grave concern at the continuing acts of terrorism and the grave violations of human rights perpetrated by terrorist groups.

47. Colombia urged States to spare no effort and to overcome some of their differences in order to make it possible to adopt a declaration that unequivocally reflected the unswerving will of States to prevent, combat and eradicate international terrorism.

48. Mr. MOTSYK (Ukraine) unreservedly condemned international terrorism, in all its forms and manifestations, which caused the death of innocent victims, had dire effects on international relations and threatened the territorial integrity and security of States. In that regard, he categorically condemned the recent assault carried out in the centre of Tel Aviv and other terrorist acts such as the taking of hostages, the planting of explosives in aircraft and political assassinations. Such acts should be condemned as criminal and unjustifiable in any circumstances, and those who organized them and carried them out, in many cases for political purposes, should be brought to justice and punished.

49. International terrorism was associated with other crimes such as illicit trafficking in arms and drugs and money laundering. That phenomenon knew no frontiers, and no country was safe from its consequences. All States must therefore unite their efforts to combat it, at the bilateral, regional and international levels.

50. At the multilateral level, Ukraine commended the measures that had been adopted to combat terrorism within the framework of the United Nations and the specialized agencies, in particular by promoting the excnange of information. He expressed gratification at the role being played by the Security Council and at the establishment within the Committee of a working group to prepare a declaration on measures to eliminate international terrorism. He believed that the United Nations had not yet fully utilized all its capacities for the elaboration of norms and should continue its work.

51. One of the aspects that deserved special attention was the preparation of a draft international convention on the safety and security of United Nations and associated personnel. The Ukraine was one of the promoters of that instrument and was confident that the Working Group established to that end would soon adopt an acceptable text, which would be a new contribution to the progress of the codification of international law.

52. Another basic approach in enhancing the effectiveness of measures to combat terrorism was strengthening the relevant international legal basis. He noted with satisfaction that an increasing number of States had acceded to the various conventions on that question. None the less, certain instruments such as the International Convention against the Taking of Hostages, the Convention on the Physical Protection of Nuclear Material and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation had not yet been universally acceded to and he urged the States that had not yet done so to ratify the relevant instruments. Ukraine, for its part, planned to accede to

/...

the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.

53. Bilateral cooperation in combating terrorism was also of great importance. All States, particularly those with common borders, should strive to collaborate through the signing of bilateral agreements, as Ukraine had recently done.

54. Lastly, the measures to prevent the phenomenon of terrorism should include education, which, while not directly helping to eliminate terrorism, made it possible to inculcate in people the idea that a terrorist act, regardless of the reasons for it and its objectives, was always a crime which must be punished. Like other delegations, he believed that all States should cooperate to eliminate the causes of terrorism and give particular attention to situations involving the massive and blatant violation of human rights.

55. **Mr. RODRIGUEZ** (Venezuela) said that in spite of efforts made to date, the phenomenon of terrorism still threatened the domestic stability of States and international security. On the basis of the Charter of the United Nations, the international community had agreed on important international instruments and adopted some very pertinent resolutions in order to condemn those unjustifiable acts. Venezuela was a party to some of those instruments and was working towards the legislative adoption of others, in accordance with its legal system. Nevertheless, there was a need to promote the signing of new instruments enhancing the effectiveness of measures to combat those practices. The draft declaration under consideration constituted a further step in combating international terrorism.

56. The international community should urge States to accede to the instruments in force and strive to define the causes of terrorism, which might be very useful in drawing up further norms in that field. Nevertheless, it did not seem appropriate to adopt exhaustive formulas in order to arrive at a complete definition of international terrorism, which might result in the exclusion of other considerations that were equally valid.

57. It was recognized that terrorism was linked to other offences that were equally condemnable and dangerous for the stability of States, such as drug trafficking, money laundering and weapons smuggling. The declaration under consideration should refer to terrorist acts that transcended borders and endangered the security of nations; in that connection, there was a need to define international terrorism.

58. States should undertake specific commitments to combat that intolerable practice and refrain from instigating, causing or promoting such acts or permitting them to originate in their territory. They should also refuse to shelter those responsible and facilitate the initiation of legal proceedings and the application of appropriate sanctions. Those responsible for terrorist acts must be punished by the State in which the act was committed or the State of which such persons were nationals; in any case, the measures to be adopted, particularly, extradition, should always be subject to the domestic legislation of States.

/...

59. The international community and competent international bodies had repeatedly condemned the phenomenon of terrorism. The Security Council had adopted very important decisions concerning specific acts, such as the hijacking of the Pan Am and UTA aircraft in 1989 and, more recently, the planting of bombs in Buenos Aires and London. The best way to combat terrorism was to promote agreement and cooperation among States and international organizations. Such cooperation should be reflected in agreements on legal assistance and the exchange of information on the results of trials and the imposition of sanctions. Venezuela was not opposed to the establishment of an ad hoc working group to draw up a draft resolution or, for that matter, to convening a conference to consider a new international instrument; nevertheless, those measures should not lead to sterile discussions that contributed nothing to the fight against terrorism.

60. Mr. CHIMIMBA (Malawi) said that Member States had been unequivocal in their condemnation of international terrorism in all its forms and manifestations. Malawi, in addition to being a party to most of the conventions relating to various aspects of the problem, had promulgated an act on the hijacking of aircraft, giving effect to three of those conventions, namely, the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The act in question not only provided for the prevention and punishment of such offences, but also made them extraditable.

61. His delegation urged States that had not yet done so to become parties to the existing international instruments dealing with the various aspects of international terrorism. Malawi welcomed the current efforts to draw up a declaration on measures to eliminate international terrorism, which in time should lead to the conclusion of an international convention on the subject. Nevertheless, it was necessary to proceed with caution, particularly where possible links to other areas of international law became apparent. Thus, measures to eliminate international terrorism should not undermine the established rules of international law on refugees, thereby threatening the entire regime for international protection. Some paragraphs in the declaration posed such a problem and neutral wording should be used. For example, one of the paragraphs could read "to refrain from providing refuge to persons who have committed terrorist acts". The end of the cold war had afforded the opportunity to make great strides in a subject that had earlier given rise to difficult conceptual and philosophical debates in the General Assembly. He urged the Committee to continue pursuing the practical approach that it had taken, without at the same time undermining well-established rules of international law.

62. Mr. AYEWAH (Nigeria) said that his country condemned all acts of terrorism wherever they occurred and by whomever they were committed. In addition, his delegation condemned unequivocally all terrorist activities as acts at variance with the purposes and principles of the Charter of the United Nations and international law, jeopardizing friendly relations between States, hindering international cooperation and violating human rights and fundamental freedoms.

63. The link between terrorist activities and drug trafficking and other criminal activities was an alarming development. The laundering of money from drug-related activities was increasing in order to purchase arms and finance other nefarious activities connected with terrorism. The internationalization of such activities posed a threat to international peace and security and undermined national democratic institutions, territorial integrity and the security of States.

64. It was clear that terrorism transcended borders and had both social and economic consequences. In order to combat that phenomenon, international cooperation should be directed towards strengthening measures to combat drug trafficking in order to reduce one of the activities that supported terrorism. In that regard, every effort should be made to stop all illegal trafficking in nuclear material, which required cooperation between the United Nations International Drug Control Programme and the International Atomic Energy Agency.

65. He wished to stress the importance of upholding fundamental freedoms and the dignity of the human person through the promotion of national policies and international cooperation, bearing in mind that all human rights - political, economic, civil, social and cultural - were universal, indivisible and interrelated. In that connection, his delegation wished to recall General Assembly resolution 46/51, which had prescribed a course of action for States and the international community, and reiterated the call for States to conclude bilateral, regional or multilateral agreements and to cooperate in exchanging information concerning the prevention and combating of terrorism.

66. States should be urged to fulfil their obligations under international law and refrain from organizing, instigating, assisting or participating in, or acquiescing in or encouraging terrorist activities within their territory or in that of other States. States must also be urged to ensure the apprehension, prosecution and extradition of perpetrators and to assist in securing the release of hostages and abducted persons. States must contribute to the elimination of the causes of terrorism, such as racism, religious intolerance and flagrant violations of human rights and fundamental freedoms.

67. Nigeria, a signatory to all the treaties on terrorism, welcomed the draft declaration currently being prepared in the Committee. At the same time, stronger multilateral measures, such as the elaboration of a convention, were required to put an end to the problem, and his delegation reiterated its call for an international conference on international terrorism.

68. Mr. YADAVA (Nepal) said that international terrorism had its roots in ideological intransigence, racism, xenophobia, socio-economic imbalances and religious extremism. Its linkage with drug trafficking and illicit arms trading had made it a global and complicated problem.

69. Nepal condemned all acts, methods and practices of terrorism, wherever and by whomever committed, as criminal and unjustifiable because they constituted a threat to peace, stability, democracy, human rights and development. Fully aware of its accountability to the international community, Nepal was both

/...

committed to the purposes and principles of the Charter of the United Nations and the norms and principles of international law and strongly determined to fulfil its obligations under United Nations resolutions and decisions.

70. Addressing the problem of terrorism required the cooperation of the international community. Consequently, all States must fulfil their obligation to refrain from organizing, instigating, assisting or participating in terrorist acts in other States or acquiescing in or encouraging such activities within their territory. The role of the United Nations and its specialized agencies in combating terrorism was important and he was thus gratified to note that a working group had been constituted to consider the question of the safety and security of United Nations and associated personnel. It was hoped that a consensus would be reached for the adoption of the related text during the current session.

71. Regarding an explicit and widely accepted definition of terrorism, his delegation subscribed to the idea of convening an international conference to elaborate a comprehensive framework convention that would contain the relevant provisions of various international instruments.

72. Regional activities could also play a significant role in eliminating terrorism. With that perspective in mind, the South Asian States had concluded, under the aegis of the South Asian Association for Regional Cooperation (SAARC), a convention on the suppression of terrorism, to which Nepal was a party.

73. Special attention must be devoted to identifying the causes of terrorism and adopting practical measures for its speedy and final elimination. International cooperation in the exchange of information, the harmonization of legislation and the campaign against terrorism could also contribute significantly to the solution of the problem. His delegation was convinced that the elimination of terrorism would help create an environment conducive to the achievement of the common goals of peace, democracy, development and respect for human rights.

74. Mr. BAYAR (Turkey) said that the problem of terrorism continued to grow at an alarming rate despite the many conventions, legal instruments and United Nations resolutions on the subject. In dealing with the question of "international" terrorism, the Committee should not take a selective approach, but should bear in mind that in most attacks large numbers of innocent civilians lost their lives at the hands of politically motivated armed groups.

75. The forms and dimensions of terrorism had caused the international community to increase its vigilance, thus permitting the unanimous adoption by the United Nations of texts in which terrorism was considered a gross violation of fundamental human rights. As terrorism went beyond national borders, there was a vital need for bilateral, regional and international cooperation that included measures for eradicating the links between terrorist groups and traffickers in arms and drugs. There were currently more than 100 internal conflicts going on around the world. In most of them, armed groups resorted to terrorist methods, with tragic consequences that were known only too well. It

was imperative for countries to remain firm in combating terrorism; accordingly, no concessions of any nature, such as paying ransom, releasing convicted terrorists from prison, applying more lenient policies or adopting selective criteria to accommodate terrorists' demands, should be made.

76. Turkey had repeatedly urged the international community to be resolute in fighting terrorism and had played an important role in the preparation and adoption of related international conventions, to which States that had not yet done so must accede. Accession, however, was not enough: States must also adapt their internal legislation to those instruments. The ICAO and IMO conventions filled a gap in international law, making it possible to try the perpetrators of terrorist attacks in accordance with the principle that they should be either extradited or prosecuted.

77. There were still some States that were lenient towards terrorists or even supportive of their political and propaganda activities. It should be borne in mind that Governments that used terrorists to achieve their political objectives might one day find that those same terrorists had turned against them.

78. Turkey welcomed the Declaration adopted in Vienna at the World Conference on Human Rights in which the scourge of terrorism was condemned. Currently, the inclination of the international community was to consider terrorism a crime against humanity, as could be seen from the draft Code of offences against the peace and security of mankind being prepared by the International Law Commission. In that connection, Turkey believed that General Assembly resolution 48/122 provided the international community with a new perspective in its fight against terrorism.

The meeting rose at 12.50 p.m.

UNITED NATIONS
General Assembly
FORTY-NINTH SESSION
Official Records

SIXTH COMMITTEE
15th meeting
held on
Friday, 21 October 1994
at 3 p.m.
New York

SUMMARY RECORD OF THE 15th MEETING

Chairman: Mr. CHATURVEDI (Vice-Chairman) (India)

CONTENTS

AGENDA ITEM 142: MEASURES TO ELIMINATE INTERNATIONAL TERRORISM (continued)

AGENDA ITEM 140: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/49/SR.15
28 October 1994

ORIGINAL: ENGLISH

/...

The meeting was called to order at 3.20 p.m.

AGENDA ITEM 142: MEASURES TO ELIMINATE INTERNATIONAL TERRORISM (continued) (A/49/257 and Add.1-3; A/C.6/49/L.1; A/49/287-S/1994/894, A/49/498-S/1994/1150, A/49/510-S/1994/1158 and A/49/528)

1. Mr. PALIHAKKARA (Sri Lanka) said that while some progress had undoubtedly been made in combating terrorism in the past two decades, his delegation was concerned that preventive efforts had not kept pace with the continuous escalation of terrorist violence in many parts of the world. A comprehensive international consensus on preventive measures and political will on the part of all countries to implement such measures were long overdue; his delegation therefore supported the renewed efforts being made at the current session to conclude negotiations for a draft declaration on measures to eliminate terrorism. While his delegation would have preferred an instrument of a more binding nature, it none the less regarded the current effort as a good start.

2. Such work should not detract from the international community's commitment to support the legitimate aspirations of peoples under racist or colonial role for self-determination. Terrorism should not be confused or equated with liberation struggles. His delegation believed that the current approach aimed at developing a general definition of terrorism, was the correct one.

3. Such efforts were all the more timely in the light of several new developments in the world. On the positive side, many countries, as well as multilateral and regional organizations, were actively seeking solutions to the underlying causes of violence and terror. On the negative side, illicit arms traffic was proliferating; various extremist groups appeared to have easy access to sophisticated arsenals built up during the cold war. The linkages between terrorism, the illicit arms trade and drug trafficking had become more pronounced. Those developments brought into sharp focus the need for an international framework for the prevention and mitigation of acts of terrorism through exchanges of experience, information and investigations, and judicial action, if needed. A draft declaration could be a meaningful step in that direction. His delegation would continue to participate in the ongoing consultations, to which more time should be allocated, as suggested by Algeria.

4. With regard to the content of the draft declaration, his delegation believed that it should: focus on a general description of terrorism; emphasize the need for all States to adhere strictly to the principle that their territory should not be used for the perpetration or organization of terrorist acts against another State, especially in regions where disparities in political and military power rendered States extremely vulnerable to manipulation by terrorists; grapple with the complex issue of guaranteeing respect for the laws granting refugee and asylum status, while at the same time ensuring that those granted such status did not contribute to or incite terrorist activities in other countries; provide a sound political and legal framework for meaningful and practical measures of international cooperation based on the obligation to

/...

prosecute or extradite; and recognize the need to coordinate global and regional cooperative activities.

5. Sri Lanka had taken the initiative within the regional forum of the South Asian Association for Regional Cooperation (SAARC) to negotiate and conclude the SAARC Convention on the Suppression of Terrorism. The Convention treated offences of a terrorist nature as non-political for the purpose of extradition, thus resolving the problem of definition for the SAARC region. Where extradition was not granted for any reason, the Convention also required national courts to exercise extraterritorial jurisdiction to prosecute terrorist offenders, regardless of where the offence was committed. Sri Lanka had enacted the necessary legislation to give effect to those provisions and welcomed the recent adoption of such legislation by other South Asian countries.

6. Mr. ENAYAT (Iran) said that terrorism not only took a tragic toll in human life and disrupted social and economic development but also imperiled the security, independence and territorial integrity of States. His own country was not immune to terrorism. Most recently, in June 1994, a bombing at the religious shrine of Mashad in Iran had resulted in 26 deaths and more than 100 injuries. It was unfortunate that some of the perpetrators of that inhuman crime had found safe haven in other countries and continued to commit terrorist acts.

7. In endeavouring to counter terrorism, the international community must not limit itself to drafting legal instruments. It should work to eradicate terrorism in all its forms, an effort to which Iran would lend its full cooperation. His country was party to, had ratified and had incorporated into its domestic law several of the international conventions relating to terrorism. Furthermore, it fully endorsed the principles set forth in the relevant resolutions of the General Assembly, in particular resolution 46/51 and 48/122.

8. In the past two decades international terrorism had taken on new dimensions and emerged in different forms. To reflect that reality, anti-terrorist measures should be aimed at preventing or combating all forms of terrorism, whether carried out by individuals, groups or States, including any acts which deprived peoples from exercising their fundamental rights.

9. His Government wished to emphasize two points with regard to the draft declaration on measures to eliminate international terrorism. First, the text should avoid any reference to religion, and secondly, the declaration should provide a clear definition of international terrorism and draw a clear distinction between terrorism and struggles for national liberation.

10. Prosecution and punishment of terrorists was clearly necessary to prevent them from repeating their crimes. Yet such measures in themselves had only limited effects. International terrorism could only be fully eradicated by identifying and eliminating its root causes, whether social, economic and political.

11. Mr. BELLOUKI (Morocco) said that illicit arms trafficking and technological advances, especially in the field of communications, had enabled international terrorists to receive world-wide media exposure. Anyone, anywhere, could be the victim of a terrorist attack. States must therefore adapt to that phenomenon and develop means for combating it.

12. His delegation vigorously condemned all terrorist acts which targeted innocent people. Such practices could not be justified for any reason. The international community must continually guard against the threat of terrorism, since intermittent action to combat it would be ineffective.

13. It was a distortion to associate Islam with terrorism. Islam was a religion based on the golden rule - a religion of peace, tolerance and moderation, which viewed life as sacred.

14. Terrorism could not be a vehicle for expressing political views. Cooperation at the subregional, regional and international levels must proceed from the principle that terrorism was a threat to all countries and to friendly relations, good-neighbourliness, stability, territorial integrity and human rights, which were the basis of international peace and security.

15. His delegation hoped that the effort to define terrorism would not impede effective cooperation between States; it also urged States not to disregard the underlying causes of terrorism. Countries which sponsored terrorist acts or permitted their national territory to be used for the purpose of planning, organizing or instigating terrorist acts against other countries acted in violation of the Charter of the United Nations and the principles and norms of international law. His country, which was a party to numerous international instruments, would spare no effort to control terrorism.

16. Cooperation should also be aimed at preventing terrorism through ongoing exchanges of information, judicial assistance and the strengthening of anti-terrorist instruments, as well as through compliance by States with their international obligations. The United Nations, as a universal forum, should establish mechanisms for harmonizing legislative policies and centralizing data collection, so as to enable States to coordinate their efforts to eliminate terrorism. His delegation welcomed the efforts to elaborate a draft declaration on the item.

17. Ms. SHAHEN (Libyan Arab Jamahiriya) said that her country condemned international terrorism in all its forms and had voiced the need to fight it, most recently in document A/49/257/Add.3. Acts of terrorism were subject to the most severe penalties under Libyan legislation, and the Libyan Arab Jamahiriya had acceded to a number of related international conventions and was in process of acceding to others.

18. During the previous session, her delegation had stressed the need for a clear definition of international terrorism, not only from the legal standpoint but for political reasons as well, for in the absence of such a definition any

State might make accusations of terrorism at will, based on a policy of double standards.

19. Her country therefore reiterated its call for an international conference under United Nations auspices to define the concept of international terrorism, examine its causes and the means of fighting it and distinguish between international terrorism, on the one hand, and, on the other, the right of peoples to self-determination and the right to support the legitimate struggle of such peoples to achieve national liberation in accordance with General Assembly resolution 46/51. Her country would find it difficult to accept a draft declaration on measures to eliminate international terrorism that did not call for such a conference.

20. With regard to the linking, by some delegations, of the Libyan Arab Jamahiriya to international terrorism on the basis of mere suspected involvement of two Libyans in the Pan American 103 and Union de Transport Aérien (UTA) 772 bombings, the matter was essentially a legal dispute between the States competent to try the suspects and should be decided on the basis of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), to which the Libyan Arab Jamahiriya, the United States and the United Kingdom were parties and which attributed jurisdiction for the trial of the suspects to the Libyan Arab Jamahiriya. The two last-mentioned States, however, had rejected the application of the Convention and managed to transfer the question to the Security Council on the basis of suspicion alone. They had further rejected the arbitration provided for by the Convention in the event of disagreement concerning its interpretation or application, thus making it necessary for the Libyan Arab Jamahiriya to refer the matter to the International Court of Justice.

21. Her country had publicly condemned all forms of terrorism, had severed its ties with all organizations suspected of involvement in terrorist activities and had proclaimed that it would not tolerate the use of its land, nationals or institutions for such activities. It had invited the Security Council to verify its assertion that no terrorist training camps existed in its territory.

22. The Libyan Arab Jamahiriya had complied with many of the United Kingdom's special requests. Moreover, it had made proposals for ascertaining the responsibility of the accused, such as resorting to the International Court of Justice, turning over the suspects to the office of the United Nations Development Programme in Tripoli, having the Secretary-General set up a judicial committee to conduct a thorough investigation or conducting, under United Nations supervision, negotiations with the countries concerned with a view to holding the trial in a neutral country. It had also accepted the proposal by the League of Arab States to have the trial conducted by Scottish judges in accordance with Scots law at the seat of the International Court of Justice. The United States and the United Kingdom had rejected all those proposals, seeking to create an image of the Libyan Arab Jamahiriya as an international outlaw and maintain the pretext for continued and indeed increased sanctions against it.

/...

23. The Libyan Arab Jamahiriya's initiatives and proposals and its acceptance of the proposal by the League of Arab States had been hailed by the Eleventh Ministerial Conference of Non-Aligned Countries and by the sixtieth session of the Council of Ministers of the Organization of African Unity, which had appealed once again to the three States concerned to respond to the efforts to negotiate a solution.

24. The Libyan Arab Jamahiriya's flexible stance and its efforts towards a reasonable solution had been met with rigidity and obstinacy, dictated solely by the logic of force.

25. It was clear that the three countries in question had induced the Security Council to confine their concern about international terrorism to the Pan American and UTA incidents, intentionally linking the Libyan Arab Jamahiriya with those events for their own purposes. If the Security Council wished to concern itself with civil aviation incidents, it should have dealt also with others that had befallen Libyan, Iranian, Korean, Italian and other aircraft, resulting in the deaths of hundreds of passengers. If the Security Council wished to play a role in fighting international terrorism and preserving international peace and security, it should have done so when United States aircraft bombed Libyan towns during the night, killing innocent persons, an act which the General Assembly had condemned in its resolution 41/38, as the Security Council should have done. Such a logic of force and such double standards could only jeopardize stability and the rule of international law.

26. Ms. WILLSON (United States of America) said that international terrorism was on the rise. In the United States, terrorism had assumed a horrifying reality when militant fanatics had bombed the World Trade Center and planned to attack the United Nations building. Her Government was determined to see terrorists brought to justice and in that connection endorsed the European Community's call for full compliance with Security Council resolutions 731 (1992), 748 (1992) and 883 (1993).

27. She would refrain from commenting on the case referred to by the representative of the Libyan Arab Jamahiriya. That case was currently before the International Court of Justice, which was the appropriate forum. The Sixth Committee was not the place for that debate or for any polemical discussions.

28. Universal application of the rule of law was one of the most effective ways to combat terrorism. The rule of law was a basic principle in free societies but anathema to terrorists, who endeavoured to subvert justice by demanding the release of convicted prisoners and by threatening judges and jurors involved in terrorism cases.

29. The United States fully endorsed the constructive role played by the United Nations system in facilitating cooperation among States in combating terrorism. She welcomed the fact that the conventions elaborated for that purpose had focused on specific types of inherently unacceptable acts, rather than on issues of motivation or context. That approach had enabled the international community to make substantial progress in using legal instruments to combat terrorism.

/...

30. While most Member States were parties to the conventions dealing with aircraft sabotage, aircraft hijacking and crimes against internationally protected persons, many had not yet become party to other anti-terrorist conventions, including the International Maritime Organization (IMO) Maritime Terrorism Convention and the International Civil Aviation Organization (ICAO) Airport Security Protocol, which her Government planned to ratify in the near future. In order for the entire set of anti-terrorism instruments to be effective, the parties must do everything possible to encourage other States to ratify them.

31. Bilateral and regional actions were also important in the combat against terrorism. Her Government had, at the request of the States involved, sent forensic experts to help investigate the recent bombings in Latin America. The United States State Department would be cooperating with Latin American Governments to develop a plan for combating terrorism in the Americas. As host of the 1994 Summit of the Americas, her country would propose that terrorism in the region should be a priority item on the agenda. Other joint efforts included cooperation between the United States and the Russian Federation on measures to control terrorists trafficking in nuclear materials; joint anti-terrorist training programmes with Germany and the Russian Federation; and State Department training programmes for local and foreign law enforcement personnel in areas including airport security, hostage rescue and crisis management.

32. The United States Government was coordinating research and development information from a number of federal agencies to provide an inventory of counter-terrorism projects and devices. It was also offering monetary rewards to anyone furnishing information leading to the prevention, thwarting or favourable resolution of any terrorist act against citizens or property of the United States. That programme had already prevented terrorist attacks and brought a number of terrorists to justice.

33. With regard to multilateral efforts, the United States regularly exchanged intelligence and law enforcement information with like-minded countries to help prevent or investigate terrorist acts. It would continue to pursue a vigorous counterterrorism strategy and to work with the international community to eradicate terrorism.

34. Mr. MUBARAK (Egypt) expressed his delegation's appreciation of the report on terrorism presented by the Legal Counsel. Terrorist acts, which claimed many innocent victims, were not a solution to any problem. On the contrary, they exacerbated conflicts. World events in recent years and the removal of the barriers between East and West had made it possible to solve many problems which had appeared for years to be intractable. However, it should be stressed that solutions had to be equitable, as they would not otherwise provide a conclusive settlement of the problem.

35. The fundamental principles underlying the fight against terrorism were: universal respect for international law, non-aggression, the settlement of conflicts by peaceful means and the guaranteeing of peoples' legitimate right to

/...

self-determination. Countries should also undertake not to shelter or train terrorists, or to finance, encourage or incite them to perpetrate terrorist acts in other countries. Pursuant to international conventions, those responsible for acts of terror should be brought to court. Egypt had ratified all the international conventions relating to terrorism, including the 1963 Tokyo Convention, the 1970 Hague Convention, the 1971 Montreal Convention and General Assembly resolutions 3166 (XXVIII) of 14 December 1973 and 46/51 of 9 December 1991. In the previous year alone, Egypt had ratified four bilateral agreements relating to the extradition of criminals. In 1992, the Egyptian criminal code and penal procedure code relating to terrorism had been altered pursuant to General Assembly resolution 46/51, and in order to bring Egyptian laws into line with international conventions to which Egypt had become a party.

36. The international community should focus its attention on eliminating terrorism so as to protect innocent people and civilians from random acts of violence. However, it was necessary to bear in mind the rights given under international law to people living under occupation, and their right to self-determination. Ignoring those rights would cause despair and provoke further acts of terror in future. It was illogical and unacceptable to think that all the rights to self-determination guaranteed by the United Nations Charter and by several international conventions and United Nations resolutions, which had been used by many countries to help gain their independence, should suddenly have become outdated and in need of alteration, and that they should be ignored when new agreements on terrorism were being ratified.

37. International terrorism could not be dealt with by further international legislation or the holding of new conferences, which took up a great deal of time and energy without achieving their desired end. However, multilateral agreements and international charters had laid the foundations for a cohesive legal system to counteract terrorism by means of international cooperation and complete commitment to the implementation of those agreements. Such cooperation could have positive results only if it was accompanied by a consensus of views and the readiness of every country to participate in the work of the whole to that end, since it was impossible for any one State or group to work in isolation. Accordingly, it was important to maintain the consensus which had been reached at previous sessions.

38. Mr. NATHON (Hungary) expressed his delegation's appreciation of the Secretary-General's report on measures to eliminate international terrorism (A/49/257 and Add.1 and 2), together with the introduction by the Legal Counsel. The two conventions in respect of which the Secretary-General performed depositary functions and the eight international instruments in respect of which the International Civil Aviation Organization, the International Maritime Organization and the International Atomic Energy Agency performed depositary functions were all part and parcel of Hungary's domestic legislation. Furthermore, various forms of terrorist activities had been incorporated into the Hungarian Criminal Code, with the maximum penalty of life imprisonment.

39. With regard to the preparation of a draft declaration on measures to eliminate international terrorism, he said that although there was manifestly

/...

broad agreement on the major aspects of terrorism and the necessity to fight it, approaches on how to do so varied. His delegation believed that a broad and comprehensive legal framework had already been established for that purpose, including a wide range of international legal instruments, General Assembly and Security Council resolutions and national legislation, and it therefore favoured the implementation of the existing rules, resolutions and domestic norms of law.

40. It followed that his delegation did not believe that the international community needed to elaborate a "framework" convention, although it did not question the good will or the cogent legal arguments of States which advocated a comprehensive and binding legal instrument. It was clear that delegations held widely differing views on certain issues, such as the definition and the causes of terrorism and its impact on bilateral relations; any attempt to work out a comprehensive legal instrument would therefore almost inevitably fail, a result which could be counterproductive with regard to further progress in fighting international terrorism and could thereby jeopardize international cooperation on the matter. It would be preferable for all States to implement the relevant existing rules. In that connection he drew the Committee's attention to the fruitful cooperation which had been developed both between Hungary and its neighbours and between States members of the European Union and those of the Commonwealth of Independent States on fighting organized crime and terrorism. His delegation shared the concern over the growing links between terrorist groups and arms or drug traffickers.

41. His delegation was in general agreement with the idea of giving an increased role to the United Nations and its relevant agencies in fighting international terrorism by making use of the existing legal instruments and urging States to implement them scrupulously. It had, however, some misgivings over the proposals that the Secretariat should establish a centre to deal with international terrorism, collecting and analysing data on various aspects of the problem and providing technical assistance to States in matters relating to the struggle against terrorism. Its belief was that apart from certain activities on which consensus was emerging - such as making periodic studies on the status and implementation of relevant legal instruments and preparing a compendium of national laws and bilateral and regional agreements on matters relating to the fight against terrorism - the United Nations was not in a position to play a more active part in that field, owing to its limited expertise and to financial constraints. It would be far better to draw on the experience accumulated in bilateral or regional cooperation among States and to promote cooperation with international agencies active in the field.

42. Hungary categorically rejected and condemned international terrorism in all its forms and manifestations, whatever political, philosophical or religious considerations might be invoked to justify it. It could be most effectively fought by the strict implementation by States of their obligations under international law, by denying a safe haven to terrorists and by ensuring that the perpetrators of terrorist acts were prosecuted or extradited.

/...

43. Mr. AL-SABEEH (Kuwait) said that the suffering caused by terrorism was all the greater for the fact that certain Member States encouraged it and were involved in exporting and financing it. Kuwait had had bitter experience with terrorism as a result of the acts of aggression and other practices directed against it by the ruling regime in Baghdad.

44. Iraq had accepted Security Council resolution 687 (1991), including the provisions of its paragraph 32 requiring Iraq to inform the Security Council that it would not commit or support any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods and practices of terrorism. It nevertheless continued to train terrorist organizations in its territory and elsewhere and to support, finance, practice and encourage international terrorism. The surest evidence of that had been Iraq's massing of more than 60,000 troops on Kuwait's borders in early October 1994.

45. The ruling clique in Baghdad had spared no effort or expense to destroy people, countries and the environment. It had dispatched terrorists to commit sabotage and assassinations, it sheltered and protected terrorist organizations and it had committed aggression against neighbouring countries and occupied their territory. Having brought the oppressed Iraqi people to submission through murder and torture, the regime had attacked its neighbour to the east, thereby ushering in an eight-year period in which almost 1 million innocent people had been killed to satisfy the whims of a despotic ruler.

46. International solidarity was the only guarantee of success in the struggle against terrorism, and it required practical and effective measures in the framework of bilateral, regional and international cooperation. They included: unconditional condemnation of terrorist acts, methods and practices; respect for the integrity, security and sovereignty of States and non-interference in their internal affairs; compliance by States with their obligations under international law to refrain from, inter alia, participating in terrorist activities, and to extradite terrorists and cooperate in their apprehension and prosecution; cooperation in the exchange of information relevant to the prevention and suppression of terrorism; harmonization of internal legislation with existing international conventions; and accession to and compliance with the relevant bilateral, regional and international conventions.

47. Ms. MAWHINNEY (Canada) said that the broad range of legal instruments adopted by the international community over the past three decades could be an effective response to the challenge of terrorism. She urged States to ratify those conventions and to enforce them through strong domestic legislation and international cooperation.

48. The Sixth Committee was well on its way to completing its draft declaration on measures to eliminate international terrorism, which would demonstrate that the international community was unified in its condemnation of terrorism. The draft recognized the criminal acts associated with terrorism and spoke out forcefully against terrorism in all its forms. It also included some concrete

/...

measures which would make more information available to the authorities involved and expand international cooperation.

49. The draft declaration should be unequivocal in its condemnation of terrorism and must appeal to States to assist each other in their fight against that common enemy. The international community must remain steadfast and send a clear message to terrorists that their activities would not be tolerated and that States were working together to eliminate terrorism regardless of the cause involved.

50. Mr. VILLAGRAN-KRAMER (Guatemala) said that defining terrorism was as problematic as defining aggression. It was perhaps for that reason that the tendency thus far had been to define terrorism in terms of particular acts rather than in general terms. That was reflected in the international conventions relating to terrorism, each of which was concerned with a specific type of act. His country had already ratified six of those conventions and hoped to ratify the remainder in the near future.

51. There were substantive legal elements concerning terrorism on which States must reach agreement. His delegation supported the idea of a working group within the Sixth Committee to draft a declaration on measures to eliminate international terrorism. However, it was not in favour of convening an international conference to define terrorism.

52. The United Nations had played and continued to play an important role in the combat against terrorism. The Security Council had made an important contribution by establishing levels of responsibility. Substantial efforts were being made to encourage States which had not done so to ratify the relevant conventions.

53. The Sixth Committee naturally approached the issue of terrorism from a legal standpoint while remaining fully aware of its political implications. States must recognize that terrorism constituted an international crime and, as a corollary, that terrorism was the concern of the international community as a whole rather than of particular States which had been victims of terrorist acts. The Committee should emphasize the view of terrorism as an international crime; such a crime incurred responsibility on the part of those who had committed it as well as on the part of the State which had endorsed or encouraged such acts without taking the appropriate preventive measures.

54. In its consideration of measures to eliminate international terrorism, the Sixth Committee should bear in mind the closely related efforts of the International Law Commission as reflected in its work on the draft Code of Crimes against the Peace and Security of Mankind and on the statute for an international criminal tribunal.

55. The United Nations should not encourage impunity; rather it should strengthen the principle of aut dedere aut judicare, which obliged States, in cases where the author of a criminal act was not subject to extradition, to hand over or bring to justice the party involved.

/...

56. In its statement contained in document A/49/257, Ecuador had rightly stressed the link between terrorists and drug traffickers. His delegation firmly supported United Nations efforts to deal with the problem of drug trafficking and in particular efforts by the United States to address that problem in the Americas.

57. Mr. MARTENS (Germany), speaking on behalf of the European Union and Austria, said that the convening of an international conference for the purpose of defining terrorism would constitute a departure from the approach taken by the European Union, as set forth in document A/49/257. In dealing with terrorism, it was preferable to avoid generalities and to focus instead on combating specific acts of terrorism. Furthermore, the convening of such a conference might perpetuate the misconception that there was a link between terrorism and the exercise of the right of self-determination. No practical results could be expected from such a conference. While the characteristics of terrorism were sufficiently known, past experience showed that defining terrorism presented insurmountable difficulties.

58. The delegations on whose behalf he spoke saw no merit in creating a working group entrusted with the elaboration of a convention dealing with the question of definition of terrorism or other general matters.

59. Mr. HASAN (Iraq), speaking in exercise of the right of reply, said that the representative of Kuwait had spoken of matters outside the purview of the Committee and had used unsuitable language. Iraq had condemned terrorism in all its forms; it was fully committed to the complete elimination of terrorism. Far from supporting terrorism, it had suffered from it: two days earlier an explosion had taken place in the building of the Ministry of Religious Affairs; and indeed the statement by the representative of Kuwait was in its way a form of terrorism, in that it sought to prolong the blockade of Iraq and to hamper the implementation of Security Council resolutions. He invited the international community to draw the appropriate conclusions from the statement of the representative of Kuwait.

60. Mr. AL-SABEEH (Kuwait), speaking in exercise of the right of reply, said that, if the representative of Iraq could term Kuwait's condemnation of Iraq an act of terrorism, he needed a lesson on the definition of terrorism. He must have forgotten the events of August 1990, as well as the action Iraq had taken against the Kurds, against the people of southern Iraq and against the Iraqi people themselves, who had been killed or tortured in vast numbers or had had their homes destroyed. As for the lifting of sanctions, it was a matter for the Security Council. If Iraq had intended to renounce terrorism and have the sanctions lifted or relaxed, he wondered why there were 60,000 troops massed on the Kuwaiti border. Iraq had to answer not only that question, but also why thousands of Iraqis were leaving the country, why an attempt had been made to assassinate a former President of the United States of America and many other questions. He called on Iraq to renounce terrorism and respect Security Council resolutions on a basis of respect and friendship.

61. Mr. HASAN (Iraq), speaking in exercise of reply, said that the remarks of the representative of Kuwait were nonsensical and did not merit a reply.

62. Mr. AL-SABEEH (Kuwait), speaking in exercise of the right of reply, said that his country's support of Security Council resolutions was clearly justified if the representative of Iraq believed that they were mere words, with no sense.

AGENDA ITEM 140: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued)

63. The CHAIRMAN announced that Belarus, Ecuador, Guinea, Guyana, Kenya, New Zealand, the Philippines, Portugal, Slovakia, South Africa and Spain had become sponsors of draft resolution A/C.6/49/L.3.

The meeting rose at 5.10 p.m.

UNITED NATIONS
General Assembly
FORTY-NINTH SESSION
Official Records

SIXTH COMMITTEE
16th meeting
held on
Monday, 24 October 1994
at 10 a.m.
New York

SUMMARY RECORD OF THE 16th MEETING

Chairman: Mr. LAMPTEY (Ghana)

CONTENTS

TRIBUTE TO THE MEMORY OF RECENTLY DECEASED INTERNATIONAL JURISTS

ADDRESS BY THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/49/SR.16
17 November 1994
ENGLISH
ORIGINAL: SPANISH

/...

The meeting was called to order at 10.30 a.m.

TRIBUTE TO THE MEMORY OF RECENTLY DECEASED INTERNATIONAL JURISTS

1. The CHAIRMAN noted with profound regret that in the interval since the previous session of the General Assembly, six eminent members of the community of international jurists had died. They were Mr. Eduardo Jiménez de Aréchaga, Mr. José María Ruda, Mr. Nikolai Konstantinovitch Tarassov, Mr. Francisco V. García Amador, Mr. Willem Riphagen and Mr. César Sepúlveda-Gutiérrez, who had been Judges of the International Court of Justice or members of the International Law Commission.

2. At the invitation of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. Eduardo Jiménez de Aréchaga, Mr. José María Ruda, Mr. Nikolai Konstantinovitch Tarassov, Mr. Francisco V. García Amador, Mr. Willem Riphagen and Mr. César Sepúlveda-Gutiérrez.

ADDRESS BY THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

3. The CHAIRMAN welcomed the President, the Vice-President and the Registrar of the International Court of Justice, as well as the Chairman of the International Law Commission and the Legal Counsel of the United Nations, who were attending the meeting.

4. Mr. BEDJAOUI (President of the International Court of Justice) said that he wished to refer to the interesting problem of the relationship between international organizations and the International Court of Justice, give a status report and outline the prospects for an evolution that would doubtless require modification of the mechanisms created by the Charter.

5. The International Court of Justice bore the primary responsibility for the resolution of conflicts of a legal nature. For a long time, only States had had access to contentious proceedings before the Court, while the recourse of international organizations had been limited to the advisory process. However, there were situations constituting threats to peace in which the parties were usually entities which could be called "infrastatal", as for example a portion of the territory of a State, or "suprastatal", as for example international organizations, whose status as subjects of international law was unchallenged.

6. As far as the advisory process before the International Court of Justice was concerned, it was appropriate to note that although consideration had been given, during the time of the League of Nations, to conferring upon the future Permanent Court of International Justice the power to issue advisory opinions regarding disputes or questions submitted to it by the Council or the Assembly of the League, with those opinions being recognized as being morally equivalent to judgements, no provisions to that effect had been included in the Statute of the Permanent Court. Subsequently, some participants in the deliberations of the Inter-Allied Committee in London in 1943 had felt that conferring the power

/...

to issue advisory opinions on the judicial body to be established after the Second World War would be incompatible with that body's judicial function. Others, however, had taken the view that the advisory process was as fundamental to the smooth functioning of the international community as to the resolution of disputes, and furthermore had proposed that States should have access to it; that solution had ultimately been adopted. Initially, the Dumbarton Oaks proposals would have allowed only the Security Council to solicit advisory opinions from the Court on legal questions regarding disputes which the States directly concerned did not submit to the Court for litigation. In San Francisco the international community had finally opted for the solution provided for in Article 96 of the Charter and Article 65 of the Statute of the Court, by virtue of which access to the Court remained quite limited, first because the organs and institutions concerned could request advisory opinions only on the legal aspects of questions arising within the actual scope of their activities, and second because all international organizations not covered by the definition envisaged in the Charter were excluded from the advisory process. The peacemaking value of the advisory process had been demonstrated in many instances in which, for particular reasons, the legal aspects of a dispute could not be litigated before the Court. The same could be said for its contribution to the smooth functioning of international organizations and the progress of international law.

7. Although access to the advisory process was relatively limited, participation in that process continued to be as broad as it had been in the system of the Permanent Court, for States as well as for international organizations. While there was still some debate as to whether the phrase "any [...] organization", contained in paragraph 2 of Article 66 of the Statute of the International Court of Justice, also included non-governmental organizations, there was no doubt that it covered all international organizations constituted by States and not simply the specialized agencies of the United Nations.

8. The advisory opinions of the Court were not binding, and it was up to each organ or institution to decide how to act on them. The Court itself had periodically emphasized that point, despite the fact that some of its members had insisted on the high juridical value and great moral authority of those opinions. The practice - dating back to the time of the Permanent Court - whereby States committed themselves in advance to defer to advisory opinions had been taken further in the Statute of the present Court, although in different form. It was a way of compensating for the fact that international organizations were not competent to refer cases to the Court for litigation, by including quasi-obligatory clauses in treaties between States and international organizations, by virtue of which, in the event of a disagreement between them, the Court would be asked for an advisory opinion which the parties would consider binding. Examples were to be found in the Convention on the Privileges and Immunities of the United Nations, the Headquarters Agreement signed between the United Nations and the Government of the United States of America, and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. Such a practical means of settling disputes between States and international organizations, often referred

/...

to as "binding advisory opinions", resembled a litigation procedure but remained completely distinct from it and was not binding per se, unless by virtue of a subsidiary obligation incurred independently of the exercise of the Court's advisory function. The practice of binding opinions had evolved in a distinctive way and had been virtually institutionalized in the provisions of the Statutes of the Administrative Tribunals of the International Labour Organization and the United Nations, which provided a procedure for the Court to revise their judgements in cases where their validity had been challenged.

9. If, as was apparently the case, it was desirable to involve international organizations more closely in the judicial procedure, it would be reasonable to ask whether their access to the Court's advisory process could be broadened. For several years, the possibility of authorizing the Secretary-General to ask for advisory opinions from the Court had repeatedly been mentioned, but that question entailed two problems. The first was one of principle, and consisted in the fact that the Secretariat was the only principal organ of the United Nations that had no access to the advisory process of the Court, and, at the same time, the only one not constituted by States. For that reason, some feared the absence of the kind of control that was exercised in intergovernmental organizations regarding the decision to resort to the Court, as well as the lack of political support such as that enjoyed by applications presented as a result of a majority vote. The second consisted in the substantive nature of the authorization to be given to the Secretary-General for requesting an advisory opinion; for example, whether it had to be permanent, whether it had to encompass the entire range of the Secretary-General's activities, or whether it had to be subject to the agreement of the parties in the case of an emerging or existing dispute. Of course, such authorization would greatly facilitate recourse to the Court's jurisdiction by making the procedure more flexible and, as necessary, faster, inasmuch as the Secretary-General would not have to deal with third-party bodies and would avoid delicate political situations. Solutions could doubtless be found permitting the international community to make good use of an opportunity of that kind, and limit its risks at the same time.

10. It was also conceivable that access to the Court's advisory opinions might be extended to organizations that were not part of the United Nations system but could benefit from the advisory procedure, either in their external relations or in their internal functioning, regardless of whether they had a court system of their own or not.

11. With regard to the historical development of the contentious procedures, Article 14 of the Covenant of the League of Nations had stipulated that the future Permanent Court would hear any dispute of an international character which the parties thereto submitted to it. That provision had applied solely to States, the only subjects of international law, although a paragraph had been added to Article 26 of the Statute of the Permanent Court of International Justice, authorizing the International Labour Office (ILO) to furnish the Court, in labour cases, with all relevant information, thereby allowing it to participate, to a certain extent, in litigation. The Statute of the International Court of Justice adhered, in principle, to the traditional

/...

approach adopted in 1920, stipulating that only States were fully eligible to be parties in cases before the Court or to intervene therein (Arts. 34, 62 and 63). However, in view of the proliferation of international organizations between the two world wars and in recognition of their increasingly important role, it had been decided to extend to all organizations and all cases (Art. 34, para. 2, of the Statute of the Court) the provision of Article 26 of the Statute of the Permanent Court which had referred solely to ILO. Article 34, paragraph 3, of the Statute of the Court, added at San Francisco, had extended somewhat further the limited locus standi of international organizations by requiring the Court Registrar to furnish them with communications and notifications pertaining to cases in certain circumstances. Article 34, paragraphs 2 and 3, which constituted the only formal link between international organizations and litigation proceedings before the Court while determining de lege lata the furthest extent to which organizations could be associated with such proceedings, had been reflected in successive versions of the Rules of Court.

12. International organizations, as subjects distinct from States, maintained legal relations with third parties that in many respects resembled those established by States. For example, there were strong parallels between the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, on the one hand, and the Vienna Convention on the Law of Treaties, on the other. International organizations could be parties at any time to a legal dispute and, being unable to submit it to the Court, had no alternative but to resort to ad hoc arbitration, a procedure that offered the advantage of flexibility but also had various drawbacks, such as the transitory nature of the decision-making body, the absence of a permanent secretariat, the lack of its own established rules of procedure and the lack of standard practices and legal precedent. Nor was the "binding" advisory opinion procedure entirely free of difficulties.

13. It had not taken long, therefore, for a tendency to relax the terms and endow the organizations with a locus standi in judicio to become apparent. The International Law Institute had taken a similar stance in a resolution adopted in 1954; that resolution, however, had failed to yield the anticipated results. Although the legitimacy of the principle seemed beyond dispute, its application posed sensitive problems. Access to the Court was ruled out unless the latter was competent ratione personae. For an organization to be a party to proceedings before the Court, not only Article 34 but also Article 35 of the Statute and Article 93 of the Charter would have to be amended. As for competence ratione materiae, it was a moot point whether international organizations could subscribe to the declaration of acceptance of the compulsory jurisdiction of the Court.

14. In addition to the external disputes of international organizations, relatively important internal disputes could also arise which did not lend themselves to settlement by reference to the model established by national constitutional or administrative norms. Only very few "integration" organizations, such as the European Union, had appropriate machinery for the settlement of such disputes: Articles 173 and 175 of the Treaty on European Union, for example, provided for a whole series of remedies against the actions

/...

of the Union's main organs. The Charter provided for no such mechanisms in the case of the organs of the United Nations. If a majority within an organ or organization that was authorized to request advisory opinions from the Court wished to seek such an opinion regarding the legality of particular steps taken by the organization (as had occurred in the case of the composition of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization), the Court could only answer the question posed but its reply would not be binding.

15. It should be noted, however, that the Court, in exceptional cases and by virtue of instruments other than the Charter, could exercise control comparable to the control of legality over the decisions of some international bodies - for example, when it delivered a "binding" advisory opinion after a review of a judgement by the United Nations Administrative Tribunal or the Administrative Tribunal of the International Labour Organization, or when it issued a judgement that had an effect erga omnes under the Convention establishing the International Civil Aviation Organization (ICAO) or the Convention of the International Maritime Organization (IMO). The decision to endow international organizations with a mechanism for the control of internal legality was obviously a political measure that States could adopt, taking into account the role of the organization concerned, its nature, degree of integration and practical needs. The Court could exercise that function provided that the Charter and Statute were amended accordingly.

16. The problems mentioned were not necessarily new, but they had arisen with renewed urgency and in a new context that called for original, comprehensive and penetrating reflection. The United Nations Decade of International Law provided an appropriate framework for such reflection, and the fiftieth anniversary of the United Nations in 1995 and of the Court in 1996 would constitute additional incentives.

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (A/49/10 and A/49/355)

17. Mr. VERESCHETIN (Chairman of the International Law Commission) said that the International Law Commission had held an extremely productive forty-sixth session, having finally adopted two complete sets of draft articles with commentaries, namely the draft statutes for an international criminal court and the draft articles on the law of the non-navigational uses of international watercourses.

18. The main purposes of the draft statute, as set out in its preamble, were to enhance the effective suppression and prosecution of the most serious crimes of international concern and to complement national criminal justice systems when those systems would be less effective. The future court was not intended to exclude the existing jurisdiction of national courts or to affect the right of States to seek extradition and other forms of judicial assistance under existing arrangements. Concern for effectiveness was also reflected in article 35 of the draft, which would give the court discretion to decline to exercise jurisdiction if the case was not sufficiently serious or could be appropriately dealt with by

/...

a national criminal justice system. In that regard, he drew attention to the obligation of States Parties to prosecute or extradite provided for in article 21. All those provisions were intended to allay the fears of some States that the court might displace national court jurisdiction or interfere with existing arrangements for international cooperation and judicial assistance.

19. With regard to the provisions of Part 1, it was to be noted that the term "court" had been preferred to the term "tribunal" on the grounds that the former was more comprehensive. Article 2 provided for the establishment of the court by treaty and for the conclusion between the court and the United Nations of an agreement establishing an appropriate relationship between them. That approach had been deemed preferable to creating the court as a subsidiary organ by way of a resolution or establishing it as a main organ of the United Nations through an amendment of the Charter.

20. Part 2, article 6, provided for a system of election of judges based on their criminal trial experience and the required expertise in international law. The term of office of the judges would be nine years, instead of 12 years as initially envisaged. The role of States parties in relation to the election of judges and the adoption of rules was regulated under articles 6 and 19 respectively. The role of the Presidency had been further developed and clarified in article 8.

21. In response to the views expressed by States, the jurisdictional provisions had been simplified and clarified in part 3. Under article 20 there were two categories of crimes over which the Court had jurisdiction. The first was that of crimes under general international law, which were listed in subparagraphs (a) to (d), namely genocide, aggression, serious violations of the laws and customs of war and crimes against humanity, the precise definition of which had been left to the draft Code of Crimes against the Peace and Security of Mankind. The second was that of crimes referred to in the treaties listed in the annex, which had been expanded to include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The two categories were not mutually exclusive; on the contrary, there was considerable overlap between them. Articles 21, 22 and 23 contained crucial provisions. The general rule regarding preconditions to the exercise of jurisdiction was contained in article 21, paragraph 1 (b), which required acceptance of the jurisdiction of the Court by the State which had custody of the suspect and by the State on whose territory the crime had been committed. Under paragraph 1 (c), however, the Court had inherent jurisdiction over the crime of genocide, on a complaint being made by a State party to the Convention on the Prevention and Punishment of the Crime of Genocide. Under article 22, jurisdiction over certain crimes was not conferred automatically on the Court by the sole fact of becoming a party to the statute but, in addition, by way of a special declaration of acceptance, a requirement that did not apply in the case of States parties to the Convention on Genocide which were also parties to the statute. That important exception had been included as a litmus test of the acceptability of the notion of ipso jure jurisdiction. Article 23 provided for a second exception, which established the jurisdiction of the Court in the case of

/...

recourse to the Court initiated by the Security Council. The Commission had felt that such a provision was necessary to enable the Security Council to make use of the Court as an alternative to establishing ad hoc tribunals for crimes which affronted the conscience of mankind. Article 23, paragraph 2, provided that the Security Council must find that the State had committed an act of aggression before a charge of aggression could be made before the Court. Paragraph 3 prevented a prosecution from being commenced, except in accordance with a decision of the Security Council, in relation to a situation with respect to which Chapter VII action was being taken by the Council. Once the Chapter VII action had been terminated, the possibility of prosecutions being commenced would revive.

22. Under part 4 he drew attention to article 26, which attempted to strike a balance between the independence and accountability of the prosecutor. Under the provision the Presidency might, at the request of the complainant State or the Security Council, review a decision of the prosecutor not to proceed with an investigation or an indictment.

23. Under part 5, he singled out article 37, which provided for a public indictment procedure similar to the one provided for in the rules of the International War Crimes Tribunal for the Former Yugoslavia. The provisions on forfeiture and restitution, which appeared in the 1993 draft (A/48/10, annex, art. 53), had been deleted given their complexity and the ability of national courts to deal with such questions.

24. As for post-trial proceedings, dealt with in part 6, he drew attention to article 48, which laid down the right of the prosecutor and of the convicted person to appeal, and to article 49, which established an important difference between appeals by prosecution and appeals by defence. In the case of an appeal by the prosecutor the Appeals Chamber could not reverse or amend a decision of a Trial Chamber acquitting an accused; it could annul such a decision only as a prelude to a new trial.

25. Part 7, concerning international cooperation and judicial assistance, dealt in article 53 with the relationship between existing extradition arrangements and requests for the transfer of an accused to the Court.

26. As for part 8, dealing with enforcement, he drew attention to articles 57 and 58, relating to recognition and enforcement of judgements, respectively.

27. The International Law Commission had devoted a substantial amount of time to the draft statute, and, considering that the establishment of an international criminal court would be a major contribution to the rule of law in international affairs and would crown efforts initiated by the United Nations almost half a century before, it recommended the convening of a conference of plenipotentiaries to consider the draft statute with a view to adopting a convention on the establishment of an international criminal court.

28. In 1991 the International Law Commission had provisionally adopted on first reading a set of articles for the draft Code of Crimes against the Peace and

/...

Security of Mankind, which had been transmitted, through the Secretary-General, to Governments for their comments and observations. In accordance with General Assembly resolution 46/54, paragraph 9, in 1994 the Commission had embarked on a second reading of the draft Code, in the light of the comments and observations received from Governments (A/CN.4/448 and Add.1) and the report of the Special Rapporteur (A/CN.4/460 and Corr.1). The Special Rapporteur had announced that he would deal with the second part of the draft Code, concerning offences to be characterized as crimes against the peace and security of mankind, in his next report, and that the list of such crimes would be prepared in accordance with a more restrictive approach than that reflected in the draft adopted on second reading. That decision had been welcomed by several members of the Commission since States were generally reluctant to waive or surrender their criminal jurisdiction and might only be willing to accept the establishment of an international criminal court in relation to the most serious international crimes. The question of the scope of the draft Code was of immediate relevance since the wording of certain provisions of the first part would necessarily differ depending on whether the Code covered a large number of offences under international law or only those crimes that involved a fundamental infringement of the international public order. In that context the appropriateness of the current title of the draft Code had been raised, since while aggression could be considered a crime against the peace and security of mankind it was more difficult to characterize genocide or crimes against humanity as such, unless the concept of peace and security was very extensively interpreted.

29. The issue of penalties, which had been left open in the draft adopted on first reading, was thorny. If the Code was to be implemented by an international criminal court it would have to state specific penalties for each crime according to the principle nulla poena sine lege. If on the other hand the Code was to implemented by national courts or by both national courts and an international criminal court, then the determination of penalties could be left to national law.

30. Many countries considered it necessary to ensure coordination between the provisions of the draft Code and the statute of the future international criminal court. While the two instruments should not be rigidly linked and while the adoption of one of them should not be contingent on the adoption of the other, there were inevitably provisions and problems common to the two drafts, given which care should be taken to avoid contradictions between them.

31. Some members of the Commission had stressed that the treaty in which the Code would be embodied should provide for an appropriate procedure for the settlement of disputes arising out of the implementation or interpretation of the instrument and specify the means of settlement to which States in dispute could have recourse in the event of failure to settle a dispute by negotiation. The Special Rapporteur would make proposals in that regard in his next report.

32. With respect to chapter III of the report, which dealt with the law of the non-navigational uses of international watercourses, he said that in 1994 the Commission had concluded the second reading of the draft on the basis of the second report of the Special Rapporteur. Part I, entitled "Introduction",

/...

consisted of four articles. Article 1 restricted the scope of the draft to the non-navigational uses of international watercourses and of their waters; article 2 defined three key terms: "international watercourse", "watercourse" and "watercourse State". Article 3 provided for the framework in which the articles could be tailored to fit the requirements of specific watercourses. In that article and subsequent articles, the Commission had replaced the word "appreciable" by "significant" in Russian. There were still doubts about an equivalent term. That change had been made simply for the sake of clarity. Article 4 identified the watercourse States that were entitled to participate in consultations and negotiations relating to agreements concerning part or all of an international watercourse and to become parties to such agreements.

33. Part II of the draft, entitled "General principles", set out the fundamental rights and duties of States. Paragraph 1 of article 5 stated the basic rule of equitable utilization and paragraph 2 established the concept of equitable participation, the core of which was cooperation between watercourse States through participation, on an equitable and reasonable basis in the use, development and protection of an international watercourse. Article 6 gave a non-exhaustive list of relevant factors to guide States in the implementation of article 5.

34. Turning to article 7, he said that many Governments had queried the relationship between article 5, entitled "Equitable and reasonable utilization and participation", and article 7, entitled "Obligation not to cause significant harm". Article 7 had been extensively debated in 1994. In working out a text, the Commission had based itself on three considerations: first, that article 5 did not provide sufficient guidance for States in cases where harm was a factor; second, that States must exercise due diligence to utilize a watercourse in such a way as not to cause significant harm; and third, that the fact that an activity involved significant harm would not of itself necessarily constitute a basis for barring it. Generally, the principle of equitable and reasonable utilization remained the guiding criterion in balancing the interests at stake. Paragraph 2 of article 7 dealt with the case in which significant harm occurred despite the exercise of due diligence. In such a case, the State whose use caused the harm was obliged to consult with the State suffering the harm over the question of ad hoc adjustments to mitigate the harm and, when appropriate, compensation.

35. Article 8 laid down the general obligation to cooperate in order to attain the objectives set forth in the draft. The bases of such cooperation were sovereign equality, territorial integrity and mutual benefit.

36. Article 9, entitled "Regular exchange of data and information", set forth the general minimum requirements for the exchange between watercourse States of the data and information necessary to ensure equitable and reasonable utilization. The rules in that article constituted a specific application of the general obligation laid down in article 8.

37. Article 10 dealt with the relationship between different kinds of uses. It set forth, as a residual rule, the general principle that no use of an

international watercourse had inherent priority over other uses and provided that, in case of conflict between different uses, the situation was to be resolved by reference to the principles contained in articles 5 and 7.

38. With regard to part III, the only important change consisted in the inclusion in article 16 of a new paragraph. The paragraph sought to alleviate the possible hardship caused to the notifying State by the notified State's failure to respond, and should serve as an encouragement to notified States to respond to the notification and search for solutions to problems of conflicting uses. The costs incurred by the notifying State could be deducted from any claims by a notified State.

39. Part IV, entitled "Protection, preservation and management", had been expanded to include articles 26, 27 and 28, which had previously appeared in the part entitled "Miscellaneous provisions", bearing in mind that, in modern thinking, management in a broad sense was an integral part of protection and preservation. Accordingly, articles 26, 27 and 28 had been renumbered 24, 25 and 26, respectively.

40. Part V and the first two articles of part VI had remained virtually unchanged.

41. The last two articles of the draft called for some explanation. Article 32 set out the principle that watercourse States were to grant access to their judicial and other procedures without discrimination on the basis of nationality, residence or the place where the damage occurred. That was a residual rule. Nevertheless, article 32 had been found undesirable by several members of the Commission within the scope of the current draft articles. Article 33 provided a residual rule for the settlement of disputes, giving any watercourse State concerned the right to initiate unilaterally a fact-finding process or, if agreed, to resort to mediation or conciliation. If, after those means had been used, the States concerned had been unable to settle the dispute, they could, by agreement, submit the dispute to arbitration or judicial settlement.

42. With regard to the question of unrelated groundwater, he emphasized the word "unrelated" because, under article 2 (b), groundwaters that were related to the watercourse came within the ambit of the draft articles. Views on whether the rules contained in the draft articles should also apply to transboundary confined groundwaters had been divided in the Commission. However, since the Commission did not have sufficient practice to rely on for the purpose of elaborating draft articles on the matter that would be on a par with those devoted to international watercourses, it had opted for a mere resolution that recognized the need for continuing efforts to elaborate rules pertaining to such waters, encouraged States to be guided by the principles contained in the draft articles in regulating transboundary groundwaters and recommended States to consider entering into agreements with the other States in which the confined transboundary groundwater was located.

43. The Commission had paid a well-deserved tribute to Mr. Rosenstock and his predecessors for their excellent work as special rapporteurs. The Commission recommended the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.

44. He drew the Committee's attention to chapter IV, entitled "State responsibility". A superficial reading of that chapter might give the impression that the Commission was at a standstill. It was true that in 1994 no article on the topic was being officially submitted to the General Assembly, but that was merely a reflection of the complexity of the two issues currently pending before the Commission, both of which had to undergo a slow process of maturation and rapprochement before a generally shared view could crystallize into draft articles.

45. The first issue was the controversial question of countermeasures, which had long been debated by the Commission. The Commission had adopted three articles on the subject: article 11, which outlined the broad framework within which a State was entitled to resort to countermeasures; article 13, which dealt with proportionality; and article 14, dealing with prohibited countermeasures. Article 12, on the conditions to be met by the injured State for recourse to countermeasures to be lawful, was still outstanding, and article 11 might have to be reviewed in the light of the text that would eventually be adopted for article 12. Although articles 11, 13 and 14 had been adopted at the previous session, they had not been formally submitted in view of the fragmentary results that had been achieved on the issue.

46. Another issue which had proved to be as controversial as that of countermeasures related to the consequences of acts characterized as crimes under article 19 of Part One of the draft articles. The debate during the Commission's forty-sixth session had confirmed that positions remained widely divergent. Some believed that the distinction between crimes and delicts reflected a qualitative difference between ordinary delicts and basic infringements of the international public order. That distinction was rooted in positive law and in the realities of international life. Others believed that there was a continuum from minor breaches at one end of the spectrum to exceptionally serious breaches at the other; the concept of crime was devoid of basis in positive law and the establishment of violations of different kinds would undermine the effectiveness of the concept of violation erga omnes. Thus the first group held that crimes entailed consequences different from those of ordinary delicts as regarded not only the available remedies and the regime of countermeasures but also the circle of States empowered to react. On the other hand, the second group believed that no qualitative distinction could be drawn between the consequences of internationally wrongful acts or claimed that the elaboration of a regime of State responsibility for crimes would pose insuperable difficulties at the current stage. The Special Rapporteur was elaborating proposals relating to the consequences of crimes for submission to the forty-seventh session and would welcome any guidance which the Sixth Committee provided him in that connection.

/...

47. Turning to chapter V entitled "International liability for injurious consequences arising out of acts not prohibited by international law", he said that the Commission had had before it the tenth report of the Special Rapporteur but had decided to defer its consideration until the following session. The Committee might recall that, in 1992, the Commission had decided to proceed by stages in its handling of that complex topic and to address first the issue of preventive measures in respect of activities involving a risk of transboundary harm. Fortunately, the Commission had made considerable progress at its most recent session on the issue of preventive measures in respect of activities involving a significant risk of transboundary harm and had adopted a complete set of articles on the matter.

48. Referring to article 1 and, specifically, to the third criterion for determining the scope of the draft articles, namely, activities involving a risk of causing significant transboundary harm, he said that the reference to risk excluded from the scope of the draft articles activities which actually caused transboundary harm such as creeping pollution, and that the words "transboundary harm" were intended to exclude activities which caused harm only in the territory of the State within which they were undertaken or which caused harm to the so-called global commons per se but not to other States. As for the criterion that harm should be caused by the "physical consequences" of an activity, that excluded transboundary harm which might be caused by State policies in monetary, socio-economic or similar fields.

49. Concerning the provisions relating to "prevention", he stressed that "authorization", mentioned in article 11, referred to the fact that governmental authorities must grant permission, in whatever form, to conduct an activity, for example, where an innocuous activity became one involving a risk of causing significant transboundary harm. Concerning article 12, risk assessment enabled a State to determine the extent and the nature of risk involved in an activity and, consequently, the type of preventive measures which should be adopted. While the Commission felt that it was preferable for domestic law to determine who should undertake the assessment and what should be its content, article 12 provided that the assessment should contain at least an evaluation of the impact of the activity not only on persons and property but also on the environment of other States.

50. In accordance with article 13, the State was required to "ascertain" whether activities involving a risk of causing significant transboundary harm were being conducted in its territory or under its jurisdiction and, if so, to direct those responsible to obtain the necessary authorization. That should be understood as an obligation of due diligence, requiring reasonable and good faith efforts by States to identify the activities under consideration. The Commission was of the view that the determination as to whether the activity should be stopped pending authorization should be made by the State of origin. If the State chose to allow the activity to continue, it did so at its own risk. The expression "at its own risk" left open the possibility that future articles under that topic might prescribe the consequences of such conduct for the State of origin and did not affect the normal application of the rules on international responsibility. Some Commission members favoured deleting the

/...

words "at its own risk", which in their view prejudged the question of liability.

51. Article 14 established a due diligence obligation whereby each State was required to formulate policies designed to prevent or minimize transboundary harm. Article 14 [20 bis] provided that, in taking measures to prevent or minimize a risk of causing transboundary harm, States were under an obligation to ensure that the risk was not "simply" transferred, directly or indirectly, from one area to another or transformed from one type of risk into another.

52. Article 18 stated that a balance must be maintained between two equally important considerations, namely, that the activities were not prohibited by international law and, at the same time, that it would be unfair to allow those activities to be conducted without consulting potentially affected States and without taking appropriate preventive measures. The article therefore provided for the holding of consultations among the States concerned, in good faith and without delay. Should the parties fail to agree on acceptable preventive measures, the State of origin could continue to conduct the activity but would be under an obligation to take into account the interests of the States likely to be affected by it.

53. Article 19 addressed the situation in which a State, although it had received no notification of an activity under article 15, had serious reasons to believe that an activity involving a risk of causing it significant harm was being conducted in another State. In such a case, the State of origin would be under an obligation to enter into consultations and, if it was established that the activity was covered by the draft articles, the State of origin might be requested to pay an equitable share of the cost of the assessment of potential harm.

54. Concerning the last chapter of the report and referring, in particular, to the planning of activities for the remainder of the quinquennium, he stressed that the Commission had confirmed its intention to complete by 1996 the second reading of the draft articles on the Code of Crimes against the Peace and Security of Mankind and the first reading of the draft articles on State responsibility. It would also endeavour to complete by 1996 the first reading of draft articles on activities involving a risk of causing transboundary harm, under the topic of international liability for injurious consequences arising out of acts not prohibited by international law. It would also have to begin work on the topics of "the law and practice relating to reservations to treaties" and "State succession and its impact on the nationality of natural and legal persons".

55. The Commission attached great importance to cooperation with other bodies such as the Asian-African Legal Consultative Committee, the European Committee on Legal Cooperation and the Inter-American Juridical Committee as a way of fostering exchanges of ideas and experience.

56. The last section of the report dealt with the thirtieth session of the International Law Seminar, held in conjunction with the forty-sixth session of

/...

the Commission. The Seminar was funded by voluntary contributions to the United Nations Trust Fund for the International Law Seminar and the Commission had noted with satisfaction the contributions of Austria, Denmark, Finland, France, Germany, Iceland, Norway, Slovenia and Switzerland to the Fund. Thanks to those contributions, it had been possible to award a sufficient number of fellowships to achieve adequate geographical distribution of participants. The Seminar also enabled young lawyers, especially from developing countries, to familiarize themselves with the work of the Commission and the activities of the many international organizations which had their headquarters in Geneva. As all the available funds were nearly exhausted, the Commission recommended that the General Assembly should again issue an appeal to States to make the contributions necessary in order to hold the Seminar in 1995 with the broadest possible participation. In 1994, very limited interpretation services had been made available to the Seminar. Apparently the Secretariat had taken steps to have the Seminar included in the calendar of conferences for 1995. It was to be hoped that Sixth Committee members would urge their colleagues in the Fifth Committee to take a positive stand on that issue and that the Seminar would be provided with full services and facilities at future sessions, despite existing financial constraints.

57. Mr. JACOVIDES (Cyprus) agreed with the decision of the International Law Commission to recommend the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles on "The law of the non-navigational uses of international watercourses". He noted, in particular, the contents of draft article 33 and reiterated the position of principle that all multilateral law-making treaties concluded under the auspices of the United Nations should encompass an effective and expeditious dispute settlement procedure.

58. The Commission had done considerable work on the topic of State responsibility. Of particular note were the provisional adoption of draft article 14 on prohibited countermeasures, based primarily on jus cogens, and the interesting debate on the type of responsibility entailed by breaches characterized as crimes in article 19 of Part One of the draft articles. While recognizing the existing difficulties, he wished to urge that work on that topic, which had been on the Commission's agenda for many years, should be completed as early as possible and should include a chapter on the effective and expeditious binding settlement of disputes.

59. Substantial progress had also been achieved on other topics: the topic "International liability for injurious consequences arising out of acts not prohibited by international law", through the adoption of a complete set of provisions on prevention; the decision to appoint special rapporteurs on the new topics of "The law and practice relating to reservations to treaties" and "State succession and its impact on the nationality of natural and legal persons"; the decision to complete by 1996 the second reading of the draft articles on the Code of Crimes against the Peace and Security of Mankind and the first reading of the draft articles on State responsibility; the decision to contribute to the Decade of International Law through the publication of a volume containing the views of members of the Commission on current topics of international law; the

/...

continued and fruitful cooperation with regional bodies; and the holding, once again, of the International Law Seminar.

60. Very useful work had been done on the draft Code of Crimes against the Peace and Security of Mankind, which contained many important articles, notably draft article 21 on "Systematic or mass violations of human rights" and draft article 22 on "Exceptionally serious war crimes", which had been adopted on first reading in 1991. Cyprus had taken the lead in calling for a revival of the item in the General Assembly, with the conviction that such a legal instrument, which served an important purpose of punishment and deterrence, deserved a place in international law. Such a code should be comprehensive and should encompass well-understood and legally definable crimes so as to ensure the widest possible acceptability and effectiveness. He was pleased to note that, in his report for the following session, the Special Rapporteur intended to limit the list of such crimes to offences whose characterization against the peace and security of mankind was hard to challenge. He also agreed that draft article 5 should be retained and that a State should be held internationally liable for damage caused by its agents as a result of a criminal act committed by them. The 15 draft articles had been submitted to the Drafting Committee and, in light of the contents of paragraphs 92 to 209 of the Commission's report, he wished to express confidence in the ability of the Special Rapporteur to eliminate unnecessary provisions.

61. It was significant and gratifying, both in terms of public perceptions and in terms of the contribution to the progressive development of international law, that the International Law Commission had come up with a timely response to the General Assembly's mandate concerning the draft statute for an international criminal court. Besides the ad hoc tribunals set up for particular situations, such as the International Tribunal for the Former Yugoslavia (Security Council resolutions 808 (1993) and 827 (1993) and the similar efforts advocated in the case of Rwanda, in recent years the momentum had been steadily building in all forums for the establishment of a permanent body. He wished to cite in particular the call made by the President of Cyprus during the Commonwealth Heads of Government Meeting, held in Cyprus in 1993. The Commonwealth, which represented nearly a third of the United Nations membership and shared a common legal heritage, could make its voice heard in the progressive development of international law and institutions, especially taking into account the significant role played in that regard by the Caribbean members of the Commonwealth. The creation of a permanent court would prevent situations which had received much publicity and given rise to complaints of double standards in dealing with certain problems.

62. The appropriate forum for commenting on the draft would be a conference of plenipotentiaries. Cyprus reserved its position on the structure of the proposed court and stressed that such a court would exercise jurisdiction only over the most serious crimes of concern to the international community and that it was intended to be complementary to national criminal justice systems.

63. Part 3, on the "jurisdiction of the court", was rightly described as central to the draft statute. The list of crimes in article 20 was along the

right lines. Under paragraphs (c) and (d), he preferred the formulation used in articles 22 and 21, respectively, of the draft Code of Crimes against the Peace and Security of Mankind, which had been adopted by the Commission on first reading. He recalled that article 22 of the draft Code, under the heading of "Exceptionally serious war crimes", included the establishment of settlers in an occupied territory and changes in the demographic composition of an occupied territory. He also wished to draw attention to paragraph 4 of the Protocol additional to the 1949 Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I).

64. He would have welcomed a less modest approach and a court with compulsory and exclusive jurisdiction, tied to a slimmed down and therefore more effective Code of Crimes; a court which was an organ of the United Nations, a permanent body with jurisdiction sufficiently broad to include crimes under general international law.

65. Those aspects could be debated in a conference of plenipotentiaries, but it was important to proceed expeditiously, not to lose the existing momentum, and to be sufficiently pragmatic to recognize that international law-making was as much the art of the possible as politics itself. The results achieved, though modest, represented the broadest common ground and left the door open for subsequent evolution and expansion, when the proposed international criminal jurisdiction would have been established and would have proven its worth and viability.

66. It was a source of satisfaction to those who valued the international legal order that the Commission, far from shirking its responsibilities, had come up with a relatively quick response in the form of the completed draft statute before the Commission, after adopting its 60 articles and their commentaries together with a recommendation for its adoption at a conference of plenipotentiaries. Although several issues remained outstanding, he was confident that the current momentum and the good reasons which had created it were sufficient to overcome the remaining obstacles and that the treaty establishing the international criminal court could come into existence by the fiftieth anniversary of the United Nations as a major element of the current Decade of International Law. In conclusion, the delegation of Cyprus urged the General Assembly to approve the Commission's recommendation for the convening at the earliest possible time of an international conference of plenipotentiaries to finalize the draft statute so that an international criminal court could finally become a reality.

The meeting rose at 1.15 p.m.

UNITED NATIONS
General Assembly
FORTY-NINTH SESSION
Official Records

SIXTH COMMITTEE
17th meeting
held on
Tuesday, 25 October 1994
at 10 a.m.
New York

SUMMARY RECORD OF THE 17th MEETING

Chairman: Mr. LAMPTEY (Ghana)

CONTENTS

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/49/SR.17
17 November 1994
ENGLISH
ORIGINAL: SPANISH

/...

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (*continued*) (A/49/10 and A/49/355)

1. *Mr. CALERO RODRIGUES* (Brazil) congratulated the International Law Commission on having completed, on schedule and with its usual high standard, its work on two important topics: the draft statute for an international criminal court and the draft articles on the law of the non-navigational uses of international watercourses.

2. The draft statute for an international criminal court was generally acceptable. Part 3, on the jurisdiction of the court, which had rightly been regarded by the Commission as central to the text, dealt with two main questions: the indication of the crimes within the jurisdiction of the court and the preconditions to the exercise of its jurisdiction.

3. With regard to the first question, the Commission's position was that the statute would be primarily an adjectival and procedural instrument and that it would not be its function to define new crimes or to codify crimes under general international law. However, if a court was to be able to function, there must be an applicable substantive law. That law did not exist, at least in written form, or existed only in an imperfect form. Neither general international law nor treaties provided a sufficiently precise definition of the crimes which were to fall within the jurisdiction of the court to ensure that the two fundamental principles of criminal law were respected: *nullum crimen sine lege* and *nulla poena sine lege*. In paragraph (4) of the commentary to article 20, the Commission indicated that certain of those crimes would be defined in the draft Code of Crimes against the Peace and Security of Mankind, although the draft Code was not intended to deal with crimes under general international law since "to do so would require a substantial legislative effort". The Commission should nevertheless rise to the challenge and provide, through the future Code, the substantive law needed for the proper functioning of an international criminal jurisdiction.

4. As for the preconditions for the exercise of the court's jurisdiction, the text submitted in 1993 would have required the agreement of too many States. With the modification introduced into article 20, the list of the States whose acceptance was required for the exercise of the court's jurisdiction had been simplified. That solution was a significant improvement since it considerably increased the possibilities of the exercise of the court's jurisdiction.

5. In the light of the serious international crimes that had been perpetrated in recent times on an unimaginable scale, a general sense of urgency appeared to prevail with respect to the establishment of a permanent international criminal jurisdiction. The international community seemed to be unanimous in its determination that such crimes should not go unpunished. The establishment of the International Tribunal for the Former Yugoslavia and the idea of creating a jurisdiction to deal with atrocities perpetrated in Rwanda reflected that

/...

feeling. Moreover, the deterrent effect of criminal law should not be overlooked. The International Tribunal for the Former Yugoslavia had, of course, had such an effect, but only in a limited way. It was to be hoped that the establishment of a tribunal whose jurisdiction was not limited territorially would have a far stronger effect.

6. It would be possible to establish the court without waiting for the adoption of the Code of Crimes against the Peace and Security of Mankind, on the basis of the list of crimes appearing in article 20 of the draft statute. He wondered, however, whether the two-year delay decided on by the Commission would not be justified if it would allow the court to be established on a much firmer basis. In the belief that the "substantial legislative effort" mentioned by the Commission was possible and necessary, his delegation was of the opinion that the Commission should be asked to continue its work on the draft Code with the same dedication it had applied to the preparation of the draft statute of the court. His delegation did not have an unreserved enthusiasm for either draft; it merely wished to heed the aspirations of the international community and to lend its cooperation in the development of the norms and institutions which might satisfy those aspirations.

7. Mr. HILGER (Germany), speaking on behalf of the European Union and Austria, noted with gratification that the International Law Commission had in 1994 succeeded in concluding the elaboration of a draft statute for an international criminal court. One of the most difficult issues in connection with the draft statute was the question of jurisdiction. With respect to genocide, the court would have jurisdiction without the need for express acceptance by the State concerned. It would also have jurisdiction over matters referred to it by the Security Council. The court would not be an organ of the United Nations and, in the context of article 2 of the draft statute, the central question would be how to forge close ties between the court and the United Nations.

8. Barely a year earlier, the participants in the International Conference for the Protection of War Victims had adopted a solemn declaration in which they had declared their refusal to accept that war, violence and hatred were being spread throughout the world and that the fundamental rights of persons were being violated in an increasingly grave and systematic fashion. Notwithstanding that Declaration, such crimes had not decreased. The European Union and Austria believed that the work on the establishment of an international criminal court must proceed apace and that, in that connection, it was important to take into account the experience of the International Tribunal for the Former Yugoslavia.

9. Provided there was sufficient agreement within the international community, the European Union and Austria were willing to support the Commission's recommendation that the General Assembly should convene an international conference to negotiate a convention on the establishment of an international criminal court. The European Union and Austria would continue to work with the States Members of the United Nations towards that end.

/...

10. Mr. AL-BAHARNA (Bahrain) said that his delegation attached great political and legal significance to the draft statute for an international criminal court, which should be established urgently to try international crimes speedily and impartially.

11. He was convinced that the court could function authoritatively only if it was integrated into the structure of the United Nations. He did not wish to enter into a debate concerning article 2, but would like to see the court established under a treaty. In that event, it would not have the character of a judicial organ of the United Nations nor would there be any need to include a provision concerning its relationship with the Organization such as that in article 2, which could accordingly be deleted. In order to reinforce the status of the court, the phrase "within the framework of the United Nations" could be added after the words "is established" in article 1; that would ensure the principle of universality and would confer on the court the requisite legitimacy and political authority.

12. Article 4 should be modified to read: "The Court is at all times open to States Members of the United Nations and to all other States in accordance with this Statute". That wording would be more appropriate since, notwithstanding its characterization as a "permanent institution", the court lacked a permanent structure. The reasons of flexibility and cost-reduction mentioned in the report of the Working Group in its commentary to article 4 (A/CN.4/L.491/Rev.2/Add.1) were not very convincing.

13. With regard to the election of judges and their qualifications, he said that, in his view, article 6, paragraph 3, was too restrictive since it limited the elective process to States parties to the statute. That function should be conferred on the General Assembly and the Security Council, or on the General Assembly alone. Also with regard to the election of judges, he proposed that the provision in article 6, paragraph 5, should be broadened and should read: "In the election of the judges, States should bear in mind that the representation of the main forms of civilization, the principal legal systems of the world and equitable geographical distribution should be assured."

14. As to the much debated issue of the jurisdiction of the Court, it was a matter of some satisfaction to his delegation that the Commission at its previous session had opted for a unified approach and had specified in clauses (a) to (d) of article 20 a list of crimes under general international law. The question of jurisdiction thus appeared to be resolved satisfactorily, except for article 23, dealing with action by the Security Council. As that issue was one of deep political consequence both for the Court and for the United Nations, it called for careful deliberation. Although the power of the Security Council to constitute an international tribunal for the purpose of trying persons committing crimes against humanity - as in the case of the former Yugoslavia - could not be impugned, it was open to question whether article 21 conformed to the requirement of judicial independence. By making the judicial process subject to the political process, paragraphs 2 and 3 of article 21 curtailed the independence of the Court. There was thus no doubt that those provisions should be modified.

/...

15. As for jurisdiction ratione personae, article 21 had simplified the consent requirement laid down in the 1993 draft. Nevertheless some doubts persisted, since the theory of "inherent" jurisdiction over genocide was open to argument and the question of the States whose consent was necessary could not be foreclosed, as had been done in article 21 (b).

16. The sources enumerated in article 28 left much to be desired, and a reference should be included to what were known as the "new sources" of international law, for example, decisions of international organizations and considerations of humanity.

17. Article 33 (c) should be more specific, since international law did not yet contain a complete statement of substantive and procedural criminal law. The text could be improved by replacing the current wording by: "applicable rules of criminal law and jurisdiction". In addition article 33 would be better placed in part 3.

18. There was a disparity in articles 20 (a) to (d) regarding application of the principle of nullum crimen sine lege, a disparity which might lead to controversy. It would be far more sensible to have a uniform rule, and, to that end, to formulate article 39 to read: "No one shall be held guilty on account of any act or omission which did not constitute a crime under international law at the time it was committed".

19. Article 42, paragraph 2 (b), dealing with the principle of res judicata, should be critically reappraised, since some States might consider it to be a derogation of their sovereign powers with regard to criminal trials.

20. The provisions on evidence contained in article 44 constituted a via media between those who felt that the issue should not be covered in the statute and those who felt that basic provisions should be included. In any event the provisions needed to be more stringent, and he suggested that paragraph 5 should be amended to read: "Evidence obtained directly or indirectly by unlawful means, or in a manner contrary to the rules of the statute or of international law shall not be admissible".

21. With respect to article 47, paragraph 1, it might be difficult for some States to accept a provision excluding the death penalty, but the provision could not be faulted in view of the fact that the death penalty had been condemned by the United Nations. Paragraph 2 of article 47, on the other hand, needed further study, since its current drafting did not indicate the relative importance of paragraphs (a), (b) and (c), and conflicts might arise if the penalties mentioned differed from one State to another.

22. Before presenting its views on the draft Code of Crimes against the Peace and Security of Mankind, his delegation wished to point out that, since the Commission was now engaged on a second reading, it should avoid making major changes in the draft articles adopted on first reading, and should, to avoid contradictions, harmonize the draft Code to the extent possible with the draft statute of an international criminal court.

23. The compromise formula suggested by the Special Rapporteur for article 1 of the draft was acceptable, in that it combined a conceptual definition with an enumerative one. The phrase "under international law" should be deleted.

24. Notwithstanding the reservations formulated by some Governments, it would be a retrograde move to delete article 2, since it embodied the autonomy of international criminal law *vis-à-vis* internal law. Article 2 could, however, be modified to read: "The characterization of an act or omission as a crime against the peace and security of mankind is independent of internal law. The fact that the act or omission in question is not a crime under internal law does not exonerate the accused".

25. The general principle regarding the criminal responsibility of individuals contained in article 3 of the draft had generally been accepted by States. Application of the concept of attempt should be left to the competent courts. In that connection the text of article 3, paragraph 3, could be amended to read: "An individual who attempts to commit one of the crimes set out in this Code is responsible therefore and is liable to punishment. *Explanation*: 'Attempt' in this paragraph means an act or omission towards the commission of a crime set out in this Code which, if not interrupted or frustrated, would have resulted in the commission of the actual crime".

26. Article 4 had been a bone of contention between those who considered it to interfere with the rights of defence and those who thought it important, especially in connection with a political offence. His delegation would support its deletion, provided that its contents were incorporated in the article on extenuating circumstances.

27. Draft article 5 seemed acceptable and should be retained, with some drafting improvements. Draft article 6, which was extremely important, should be linked with international criminal jurisdiction, and, accordingly, harmonized with the draft statute of an international criminal court. A possible solution would be to make article 6, paragraphs 1 and 2, of the draft Code subject to article 53 of the draft statute, and to drop paragraph 3. Alternatively, article 6, paragraph 3, could be amended to include within its ambit the essence of article 53 of the draft statute. His delegation had some misgivings regarding the peremptory nature of the rule in article 6, paragraph 2, which might be addressed by replacing the words "shall be given" by "may be given".

28. The view that article 7 of the draft should be deleted appeared to go against the letter and spirit of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Accordingly the scope of the article should be confined to "war crimes" and "crimes against humanity" since, in the absence of such a provision, States might apply different norms regarding statutory limitations, which would weaken the international system.

29. Article 8 of the draft should be harmonized with article 41 of the draft statute of an international criminal court in order to eliminate the divergence between the two texts as to the admissibility of a trial *in absentia*.

/...

30. Draft article 9 allowed for trial by the international court if the trial in a national court had been a "sham". That exception to non bis in idem constituted a derogation of the principle of territorial sovereignty and had led to acute criticism by some States.

31. Draft article 11 was based on principle IV of the Principles of International Law recognized in the Charter and Judgement of the Nürnberg Tribunal. It would be preferable to stay closer to the text of that principle, so that the article would read: "The fact that an individual charged with a crime against the peace and security of mankind acted pursuant to an order of a Government or a superior does not relieve him of criminal responsibility under international law, provided a moral choice was in fact possible for him".

32. Despite the reservations expressed by some members of the International Law Commission, draft article 12 appeared reasonable, and it might not be prudent to modify the text adopted on first reading. Draft article 13, which was squarely based on principle III of the Principles of International Law recognized in the charter of the Nürnberg Tribunal and in the Judgement of the Tribunal, should also remain as it was.

33. The defences contained in draft article 14 should be discussed separately from the extenuating circumstances dealt with in article 15. It might perhaps be appropriate to include in the text of article 14 the elements mentioned by the Special Rapporteur in paragraph 159 (a), (b) and (c) of his report A/CN.4/460. In addition, it would be desirable for the International Law Commission to examine the tenability of including other defences, such as "insanity", "mistake", etc. The text of draft article 15 should be harmonized with that of article 46 of the draft statute of an international criminal court. In addition, it should deal with both extenuating and aggravating circumstances.

34. Mr. THIAM (Guinea) congratulated the International Law Commission on its excellent report and on the progress made with respect to the items on its agenda. Its praiseworthy efforts at the codification and harmonization of international law served the purpose for which it had been established by the General Assembly in resolution 174 (II), in that ensuring the primacy of law was the principal guarantee of international peace, security and cooperation.

35. Referring to the draft statute of an international criminal court, he said that he had already expressed his preference for a permanent court consisting of a prosecutor, independent judges and a registry, functioning as a subsidiary organ of the United Nations, which would confer on it the universality, authority and permanence of that Organization. Although it could be established by resolution of the General Assembly or the Security Council, it would be preferable for the court to be established by a convention adopted by a conference of plenipotentiaries.

36. Where the applicable law was concerned, he welcomed the fact that the International Law Commission had abandoned the restrictive approach, in that article 20 of the draft statute gave a complete list of the crimes over which the court had jurisdiction. That list had the merit of expressing the

fundamental guarantee of criminal justice, namely the principle nullen crimen sine lege.

37. Article 54, which established the principle aut dedere aut judicare, conferred on the statute the character of written justification for action in the case of a State which did not accept the Court's jurisdiction.

38. Article 23 was based on an approach much better than that of leaving to the Security Council the decision to establish ad hoc tribunals in each specific case, in that the proliferation of ad hoc jurisdictions would not permit the establishment of international criminal case law. Moreover, the permanent nature of the Court would enable the judges to enrich their case-law experience.

39. Apart from the crimes which were within the specific jurisdiction of the court, the right to refer matters to it should not be reserved exclusively to the Security Council; a major role should also be assigned to the General Assembly. The "negative" veto provided for in article 23, paragraph 3, recognized simultaneously the priority assigned to the Security Council and the need to coordinate the activity of the Council and that of the court. Moreover, the substantial inequality between States members of the Security Council and those that were not members which article 23 appeared to introduce derived from the composition of the Council, not from an imbalance created by the provision in question.

40. According to the draft statute, any State that had accepted the jurisdiction of the court could lodge a complaint with it. That provision, which established a link between the litigant and the jurisdiction, was not simply a means of promoting recognition of the jurisdiction of the court, but established an obligation to cooperate with it, thus giving it authority, credibility and effectiveness.

41. The view which had prevailed that the procurator should not be authorized to initiate an investigation in the absence of a complaint was correct, since it would avoid the risk of a situation arising in which the criminal was in the territory of a State that had not accepted the court's jurisdiction.

42. The autonomy of the Prosecutor was superfluous in international law, and reinforced the principle that the complaint was the mechanism that triggered the investigation. Once the complaint had been declared admissible, the Prosecutor enjoyed the necessary autonomy to initiate proceedings against the persons suspected of having committed an international crime. The requirement that the Presidency must confirm the indictment drawn up by the Prosecutor appeared to be an additional guarantee of the rights of the accused. Only on the basis of that confirmation did the suspect become an accused. Naturally, confirmation of the indictment could not prejudge the decision of the court.

43. The establishment of a double level of jurisdiction distinguished the court from ad hoc tribunals established for specific cases, thus avoiding accelerated or summary proceedings. Those two levels, one for trial and the other for appeal against the decisions taken at the trial level, afforded an opportunity

/...

to establish in a universal manner the principle of dual jurisdiction recognized in the covenants on human rights as a basic procedural guarantee. Moreover, the combination of appel and cassation within the court was in response to the concern for rapidity of proceedings. Lastly, the draft statute assigned to the Presidency the power of revision, thus closing the entire procedural cycle and meeting the desire for equity expressed by the international community in the covenants. In conclusion, to give the court the required efficiency, States would have to cooperate with it in the various phases of the proceedings, particularly in investigation, provision of evidence and extradition of presumed criminals.

44. Recent events in Liberia, Rwanda, Somalia and the former Yugoslavia demonstrated that the code of crimes against the peace and security of mankind was still relevant. The General Assembly had been dealing with that issue since 1947, when it had entrusted the International Law Commission with the preparation of a draft code of crimes, an ideal instrument for the prevention and suppression of acts which endangered civilization.

45. With regard to the definition of crimes, a general formulation followed by an indicative, non-limitative enumeration setting forth the relevant criteria for drawing up the list of crimes would be preferable. The sovereignty accorded to the judge to characterize the offence was acceptable, in that it strengthened the principle nullum crimen sine lege, and allowed him to perform an important role in characterizing the actions and omissions attributed to a person.

46. With regard to the responsibility of the State for the actions of its agents, he shared the view expressed by the Special Rapporteur in article 5 to the effect that the State was responsible only for acts committed by persons connected to it by undeniable links of subordination. In that criminal responsibility was personal and individual, it was inconceivable with respect to the State, which was a moral person not subject to penal measures.

47. The debate as to the scope of article 6 demonstrated that the establishment of an international criminal court offered an ideal solution to the problem of positive or negative conflicts of jurisdiction and guaranteed the inevitability of punishment for persons committing crimes against humanity.

48. The principle of non-applicability of statutory limitations provided for in article 7 was designed to ensure the punishment of the perpetrators of those crimes. However, as the Special Rapporteur had observed, that provision might be a bar to amnesty and national reconciliation, and its absoluteness might have drawbacks. The solution would be to adopt a long period of non-applicability and to provide for States to adopt amnesty measures when to do so would advance national reconciliation.

49. Exceptional seriousness being one of the criteria for categorizing an action or omission as a crime against humanity, other aggravating circumstances were unnecessary, since they were implied in the definition itself of the crime.

/...

50. When, at the end of the Second World War, the international community had embarked on the task of harmonizing the principles of international law, its purpose had been to seek security and peace and cooperation among States. While the solutions proposed by the Commission would not satisfy everyone, the objective should be to provide options that reflected the interests of the majority, not to meet the individual demands of each State. Undoubtedly, the Commission had performed its task most satisfactorily.

51. Ms. BONINO (Italy) congratulated the Chairman of the International Law Commission on his clear and comprehensive introduction of the Commission's report, which provided a sound basis for a discussion as substantial as required by the importance of the issues.

52. Turning to the new draft statute for an international criminal court, she said that it was a definite improvement over the previous draft, since it completed issues that were unsettled or insufficiently addressed. It was flexible and balanced and reconciled the need for an effective international court with respect for State sovereignty. Although there was certainly room for improvement, the draft laid a solid foundation for negotiations towards achieving international consensus. There was no reason for the United Nations to delay its response to the tragedies of entire populations and the most blatant violations of fundamental humanitarian principles. The draft provided an appropriate legal instrument for such a response.

53. Regarding the establishment of the court and its relationship to the United Nations, she supported the solution envisaged in the draft statute, namely, a treaty commitment and the conclusion of a relationship agreement between the United Nations and the presidency of the court. While the idea of amending the Charter to establish the court as a principal organ of the United Nations was appealing, it would create problems and the risk of delay. The proposal to establish the court as a permanent institution that would meet only as required was acceptable.

54. Regarding the composition and administration of the court, she was glad to note that the terminology had been simplified by the elimination of the reference to the "Tribunal". The method of selecting judges seemed to respond to the need for impartiality and competence, although a rigid distinction between recruiting judges on the basis of their criminal trial experience or of their competence in international law might conceivably be a bar to the appointment of persons with both qualifications. She also welcomed the separation of trial and appellate functions and the reiteration of the fundamental principle of independence of the judges and of members of the procuracy.

55. Among the most delicate questions were subject-matter jurisdiction and State acceptance of its jurisdiction. The new draft indicated a feasible way to balance the various interests. For example, it abandoned the distinction between treaties which defined crimes as international crimes and treaties on the suppression of conduct constituting crimes under national law, thereby reducing the complexity of the system. At the same time, the annex referred to

in article 20 (e) included the 1988 Convention against Illicit Traffic in Narcotic Drugs and the 1984 Convention against Torture. While the new statute did not confer on the court generic jurisdiction over violations of customary international law, it granted the court jurisdiction over four types of specific crimes: genocide, aggression, serious violations of the laws applicable in armed conflicts and crimes against humanity.

56. The system of acceptance placed limits on the court's jurisdiction. An excessive reduction of jurisdiction by the sum of individual States' declarations should be avoided. In principle, she favoured an "opting-out" system that would give States parties the right to exclude some crimes from the court's jurisdiction. However, she recognized that the Commission's "opting-in" approach had its merits and could well facilitate wider acceptance of the statute.

57. The solutions contained in article 23 on the court's jurisdiction resulting from an action by the Security Council were appropriate. She welcomed the fact that the Security Council would be entitled to refer matters to the court, as an alternative to establishing ad hoc tribunals, an approach which her delegation considered positive in the absence of a permanent court, but which could not always be the answer to crimes that affronted the conscience of humankind.

58. Part 4, "Investigation and prosecution", and part 5, "The trial", established a satisfactory system consistent with the principles of justice and protection of the fundamental rights of the accused. She was pleased to note that certain changes reflected the remarks made by her delegation in 1993. For example, thanks to the exclusion of capital punishment from the sentences that the court was authorized to impose, the system established was consistent with every human being's fundamental right to life. As far as international cooperation and judicial assistance were concerned, she commended the incisive and well-balanced text in the articles specifying States' duties, especially in the areas of transfer of an accused to the court and obligation to extradite or prosecute.

59. Crimes against humanity were being committed: yesterday in Somalia, today in Rwanda and Bosnia and tomorrow in other parts of the world. The perpetrators of those brutal acts were often rewarded with impunity because there was no international authority to track down and punish offenders. The discussion of an ideal structure for an international criminal court could continue, interminably, but the worsening of international crises had reduced the time available to reflect, public opinion demanded action, and the court was the most advanced instrument for counteracting the risk that the law might lose its effectiveness. It was time to take swift action by creating a judicial mechanism with the necessary authority and operational structures to punish the most serious of international crimes.

60. The draft statute was ready to be discussed by Governments with a view to finalizing the instrument that would establish the new jurisdictional body. The General Assembly should decide at the current session to convene a diplomatic conference in 1995 to conclude a convention to that effect. In so doing, the

international community would show full respect for human dignity and avoid any complicity with those responsible for heinous crimes, wherever they were committed. Italy would be honoured to host the diplomatic conference concerned.

61. Although legal problems remained to be solved, public opinion would not tolerate further delays. The moment had arrived for the international community to give the world a clear sign of its will for peace with justice. Every postponement, every ambiguous or hesitant message, would create a dangerous gap between public opinion and the United Nations, emitting the wrong signal as preparations were being made to celebrate the Organization's fiftieth anniversary. Peoples who believed that justice was the foundation of international society needed such a response.

62. Mr. HAYES (Ireland) said that, during the deliberations on the establishment of an ad hoc tribunal for the prosecution of crimes committed in the former Yugoslavia, his delegation had indicated that that should not prevent the Commission from continuing to study the establishment of a permanent international criminal court. Accordingly, it supported the Commission's recommendation that the General Assembly should convene an international conference of plenipotentiaries to study the draft statute of the court and to conclude a convention on its establishment.

63. The structure and provisions of the draft statute which the Committee had before it were acceptable. His delegation welcomed, in particular, the fact that the draft statute specified that the court was intended to be complementary to national criminal justice systems. Perhaps its jurisdiction should be limited at the beginning to what was described as inherent jurisdiction; it could then be extended as confidence in the court grew and the need for wider jurisdiction was recognized. In any case, there must be certainty about both the limits of jurisdiction and the crimes covered. In that connection, the provisions of draft article 23 on action by the Security Council should be analysed more carefully.

64. His delegation welcomed draft article 37, which excluded trial in absentia, except in circumstances which might be regarded as falling outside that classification. It also supported the language of article 42, which recognized the principle of non bis in idem and whose limitations seemed reasonable. On the other hand, draft article 48, in so far as it permitted appeal against acquittal, warranted further consideration.

65. Mr. HARPER (United States of America) said that his delegation had closely followed the question of the establishment of an international criminal court, as it was firmly committed to the fight against crime, particularly crime which affected the international community. His Government was also committed to bringing to justice persons who had violated international humanitarian law. It had therefore supported the establishment of an international tribunal for the prosecution of war crimes committed in the former Yugoslavia and the establishment by the Security Council of a similar court to deal with Rwanda. Interest in establishing a permanent court was understandable in view of the atrocities committed in both countries and elsewhere in the world; the problem

/...

was how to address the needs and concerns of the international community in that regard. War crimes, crimes against humanity and genocide were the most compelling arguments for the establishment of a permanent court, since they directly affected issues of peace and security; on the other hand, that need did not seem so clear in other situations. The key issue was to determine the extent to which a permanent court would ensure the prosecution of persons who had committed serious crimes and whether the court would help or merely hinder national efforts to that end.

66. The work of the Commission in that regard was highly commendable, but United States support for the establishment of a permanent court would depend on the solution of a number of fundamental problems. First and foremost, his delegation must be assured that the court would be of a complementary nature and that the new system would not undermine existing law enforcement efforts. Guidelines must therefore be established in order to determine which cases should be heard by the court. If the jurisdiction of the court included crimes covered by terrorism conventions, cases should be initiated only with the consent of the States which were directly interested. Moreover, States which had signed extradition treaties or status of forces agreements with the custodial State should have the right to reject the jurisdiction of the international court.

67. His delegation did not believe that drug-related crimes should be included in the court's jurisdiction, as it believed that the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was not specific enough to form the basis for criminal charges. In that connection, it would be preferable if such cases were to be submitted to national courts. Establishing that States with direct interests in terrorism cases should give their consent in order for the court to declare that it had jurisdiction would help to ensure that national efforts, including existing cooperation in extradition and mutual assistance, were not undermined.

68. His delegation trusted that, in the absence of a consensus, States would not insist on the draft Code of Crimes against the Peace and Security of Mankind, since including such crimes in the jurisdiction of the court would raise a number of additional concerns. The Security Council should have sole authority to determine whether the court was competent to hear cases involving war crimes, crimes against humanity or genocide, for those crimes were of significance to all States and would always be committed in connection with situations which threatened international peace and security.

69. With respect to the operation of an international criminal court, careful consideration would have to be given to the fact that international judicial proceedings were extremely expensive. Thus, States parties should understand in advance the financial consequences of establishing such a court.

70. An ambitious project had been completed and it was now a time for States to engage in consultations and decide on future action. The General Assembly should establish an ad hoc committee that would meet before its fiftieth session in order to discuss issues related to the establishment of the court and decide

whether a diplomatic conference should be convened. Before an institution of such importance and permanence was established, a consensus must be reached.

71. Ms. LINEHAN (Australia) said that the draft statute for an international criminal court formed a suitable basis for negotiation. Her delegation agreed that the court should be a permanent institution but should sit only when it was necessary to hear a case. It was convinced that the court must occupy a clear place within the United Nations system in order to ensure its universality, authority and effectiveness. That could be achieved if it were a subsidiary organ of the United Nations or if it had a formal relationship with the Organization. Her delegation agreed that the court should be established under a multilateral treaty and believed that, in future negotiations on the statute, States should focus on the details of the court's relationship to the United Nations and on practical matters such as the financing of its activities, taking into account, in particular, the fact that the Security Council would be able to refer matters to the court under Chapter VII of the Charter of the United Nations.

72. It was important that the Court should have jurisdiction over the most serious crimes of concern to the international community, whether such crimes were covered by treaties specified in the statute or by general international law. The court must have jurisdiction over crimes under customary international law in order to avoid gaps which might place the perpetrators of atrocious crimes not provided for in treaties outside the jurisdiction of the court. Her delegation was pleased that the statute identified particular crimes rather than making a reference to general international law.

73. It noted with satisfaction that the jurisdictional provisions had been simplified, making them more understandable to non-specialists. Her delegation also endorsed the basic approach in draft articles 21 and 22, whereby the court would exercise jurisdiction on the basis of consent by the parties, except in cases of a breach of the Convention on the Prevention and Punishment of the Crime of Genocide or where the Security Council referred a matter under Chapter VII of the Charter. It might have been preferable to give States the option of declaring their acceptance of the court's jurisdiction with respect to specified crimes, even though that might limit its effectiveness; perhaps that would have ensured a more widespread acceptance of the statute. The current draft allayed the concerns of some countries about a possible loss of sovereignty or duplication of existing court systems. The provision that the underlying premise of the statute was that the court should be complementary to national criminal justice systems where such procedures were unavailable or ineffective was most welcome. In that connection, the Commission had recognized the need to guarantee the rights of the accused and ensured that the statute contained provisions which embodied relevant fundamental human rights standards and standards drawn from national criminal law systems.

74. In sum, the draft statute represented a balanced effort which resolved many of the difficulties that arose in the establishment of such a court. The next step must now be taken, namely the convening of a preparatory conference for a diplomatic conference, to be held in 1996, in order to adopt the statute.

/...

75. Mr. TRAUTTMANSDORFF (Austria) said that he had read the Commission's report carefully; in addition to other valuable contributions, it contained two completed drafts: the draft statute for an international criminal court and the draft articles on the law of the non-navigational use of international watercourses.

76. Austria attached great importance to the establishment of an international criminal court and it fully supported the statement made by the representative of the European Union. The codification process should continue in the most expeditious manner possible, but without detriment to the quality of the text ultimately to be adopted by Member States.

77. The aim was not to superpose an international criminal jurisdiction over national law. The court was expected to fill the gaps left by domestic law, which hindered the prosecution of some of the most detestable crimes of modern times. Essentially, the court should be an international legal institution that would complement national criminal jurisdiction and contribute to the enforcement of national law. Serious crimes against mankind often went unpunished because they were committed in situations of armed conflict which prevented the domestic law enforcement systems from functioning effectively. Recently, there had been many examples of such cases and they continued to occur even at the present time. Accordingly, an international criminal court that rested on firm legal and institutional bases and enjoyed wide acceptance could serve as an effective instrument for bringing the perpetrators of such crimes to justice.

78. In principle, the draft statute met those requirements, although there remained numerous shortcomings due, mainly, to the complicated and sensitive nature of the subject and perhaps, also, to some misconception as to the purpose and functioning of the court. Austria had formulated some comments on those shortcomings, which were contained in document A/CN.4/458/Add.7.

79. As for the procedure to be followed, he believed that the international criminal court should be established on the basis of an international convention adopted at a conference of plenipotentiaries. Such a conference should be held no later than 1996, in which case 1995 could be used to further improve the text of the draft statute. Accordingly, a preparatory committee should be established during the current session, with a clear mandate to deal with the procedural and the substantive preparations for the conference of plenipotentiaries.

80. With regard to the draft code of crimes against the peace and security of mankind, he welcomed the further progress which the Commission had made. Once adopted, that code would be an important additional basis for the legal rules to be applied by the court.

81. With regard to the subject of State responsibility, the draft articles had a long way to go before they reached the required level of maturity, for there were still many questions that merited in-depth analysis. The debate concerning the concept of "international crime" for example, had entered a difficult phase,

/...

and he wondered whether there was not a risk of forgetting the basic concept of what the codification process was intended to achieve. None the less, the Commission's use of a questionnaire to structure the debate had produced positive results, setting a precedent which, as the Commission itself had pointed out in paragraph 233 of its report, ought to be repeated. In any event, the basic question of whether the concept of crime could constitute an indispensable element of the codification of the rules on State responsibility had yet to be answered.

82. Nor was there consensus in the Commission regarding such other central issues such as, for example, whether the term "crime" was properly used in the draft; whether the list or wrongful acts to be qualified as crimes set forth in paragraph 3 of article 19 of Part One of the draft articles was satisfactory; whether a State could incur criminal responsibility and who was competent to determine that a "crime" had been committed in a given case.

83. In view of those differences of opinion, it might be advisable to explore the possibility of trying a different approach to the problem, as had been suggested in the debate in the Commission, on the basis of two combined elements, namely, a more sophisticated elaboration of the consequences of violations of erga omens obligations and a more direct link with the draft code of crimes against the peace and security of mankind, so as to make the code, when adopted, applicable to all violations of the special category of erga omens obligations.

84. Accordingly, the primary objective of the codification process was not to establish a regime of criminal law regulating the behaviour of States, which was unlikely to come about, but to codify widely accepted international legal procedures for settling peacefully the consequences of State responsibility for injuries caused to other States. In other words, codification efforts should focus on a workable procedure to be applied prior to taking countermeasures.

85. The use of such a concept of crime as a qualifying element for determining the procedures to be followed prior to taking countermeasures, on the one hand, and for determining the quality of such measures, on the other hand, seemed problematic to say the least. Such a use of the notion of crime, in the absence of an effective international authority which would decide when such a crime had been committed and would apply punitive measures, also seemed risky, if not counterproductive. Moreover, application of the classic notion of crime might destroy the fine balance of interests which must be maintained between injuring and injured State in order to give dispute settlement procedures prior to taking countermeasures a chance of being effective. It should not be forgotten that, in practice, such procedures would be applied less to grave breaches of international law than to cases of limited injuries in an environment of highly intensified and diversified transboundary relations. In many instances, procedures prior to the adoption of countermeasures might help to prevent escalation of measures and countermeasures which might be triggered by a relatively minor violation.

86. It seemed obvious that, with regard to articles 11 to 14 of Part Two of the draft articles, the Drafting Committee - and possibly a majority of the Commission - were at odds with the Special Rapporteur on important points of substance. The arguments in favour of a separate category of "interim measures of protection" did not seem fully convincing. In the first place, it might lead to confusion since it might be interpreted as including, inter alia, the right to suspend or terminate a treaty in accordance with article 60 of the Vienna Convention on the Law of Treaties. Yet such suspension or termination was a "measure of protection" established by the primary norm system of the law of treaties and had nothing whatever to do with the secondary norms of State responsibility. Secondly, while the Special Rapporteur stated that the concept of interim measures of protection was a rather broad one, he also said that it could not be stretched beyond reasonable limits (A/CN.4/461, Add.2, art. 12), and a subjective element of "reasonableness" made "interim measures of protection", in practice, indistinguishable from countermeasures. Thus the text prepared by the 1993 Drafting Committee, which did not refer to interim measures of protection, was preferable.

87. There was also an apparent difficulty in formulating the requirement for legitimate countermeasures in article 12. The difficulty was caused by the necessity of striking an equitable balance between the legitimate claim of the injured State to obtain redress of the (wrongfully) caused injury and the protection of an alleged law-breaking State against rash or arbitrary action by the self-proclaimed victim. In a phase where no objective assessment had yet taken place, it would be more equitable and realistic to give the choice of the dispute settlement procedure to the alleged law-breaker in order to avoid the impression of a diktat. To achieve that balance, the structure of article 12 as proposed by the Drafting Committee in 1993 should be retained, but the opportunity it gave to the alleged law-breaking State to have recourse to a dispute settlement procedure should be transformed into a right of that alleged law-breaking State. The injured State would also be protected, since it could apply countermeasures as long as the alleged law-breaking State did not offer an effective dispute settlement procedure. Formulated that way, the provision would induce the parties to seek the settlement of their dispute in an appropriate procedure.

88. Finally, his delegation noted with appreciation that the Commission had completed two very important tasks and was initiating consideration of "The law and practice relating to reservations to treaties" and "State succession and its impact on the nationality of natural and legal persons", for which it had appointed Special Rapporteurs. He hoped that the Commission would continue, in its future annual reports, to indicate those specific issues on which expressions of views by Governments were invited, given the excellent results achieved so far with that procedure. Finally, he trusted that the International Law Seminar would remain operational; the Austrian contribution to the Trust Fund had shown the special interest attached to the Seminar by his Government.

89. Mr. ECONOMIDES (Greece) said that the inherent jurisdiction of the Court which, according to article 20 of the draft statute for an international criminal court, was restricted to the crime of genocide, should be extended to the crimes listed in article 20 (b), (c) and (d).

90. The analogy made by the Commission between the International Court of Justice and the international criminal court was legally erroneous and politically deplorable, for three reasons. Firstly, because the International Court of Justice was an early twentieth-century institution, whereas the criminal court would belong to the next century, and much change had taken place between those two times, especially in the field of international criminal law. Secondly, the Statute of the Court was annexed to the Charter of the United Nations and, consequently, the States parties to the Charter were ipso facto parties to the Statute of the Court; it was understandable that States were allowed to choose whether to accept the optional jurisdiction of the Court, whereas according to the Commission's recommendation, the statute of the criminal court would be a completely autonomous international convention which could regulate, for example, the court's jurisdiction. Thirdly, because the jurisdiction of the Court was general and could deal with any type of legal dispute, while the jurisdiction of the criminal court would be extremely specialized in the humanitarian field, since its mission was to punish the most serious international crimes against the fundamental interests of humanity. Furthermore, it should be emphasized that the crimes listed in article 20 of the draft statute were violations of well-established norms of general international law of a peremptory nature (jus cogens).

91. The current drafting of article 22 excessively restricted the court's jurisdiction, and could make it problematic in practice. On a strictly legal level, he also wondered whether a State which became a party to the statute could, in its declaration of acceptance of the court's jurisdiction, exclude certain crimes which were prohibited by peremptory rules, and whether such an exclusion would not, in effect, be tantamount to a reservation eliminating a rule of jus cogens. For that reason, article 20 should adopt the solution of ipso facto jurisdiction, i.e. without any special declaration of acceptance by the State party of the international criminal court in respect of genocide and the other crimes referred to in article 20 (b), (c) and (d).

92. Referring specifically to the draft statute, he said that in article 23, regarding action by the Security Council, paragraph 2 was unnecessary and should be deleted, since the criminal court itself would be perfectly capable of taking note of an act of aggression. No such limitation had been placed on the International Court of Justice itself; its jurisdiction extended to all matters specially provided for in the Charter of the United Nations, including matters having to do with refraining from the threat or use of force. It would then be necessary to adopt a more toned-down solution, whereby if the Security Council made a positive or negative decision, the court would be bound by that decision, but if the Security Council made no decision, the court would be at liberty to exercise its jurisdiction. The draft statute should also expressly mention the Code of Crimes against the Peace and Security of Mankind, which, once completed, would strengthen it. Regarding article 35, "Issues of admissibility", he

/...

considered it superfluous. Lastly, the text of article 59 should state that the court would supervise the enforcement of prison sentences in accordance with provisions that it would itself adopt.

93. Regarding the draft Code of Crimes against the Peace and Security of Mankind, he made the following points. Regarding article 1, a simple list of the crimes, without definitions, would suffice. Article 4, on the subject of motives, should be deleted; it was too general and of dubious usefulness. Article 7, regarding non-applicability of statutory limitations, should be considered again at a later stage, when all the provisions of the code would be known. Articles 8, 9 and 10 should as far as possible be harmonized with the corresponding provisions of the draft statute for an international criminal court. Article 14 should be restricted to self-defence, excluding the notions of coercion and state of necessity.

94. Regarding section III, on the law of the non-navigational uses of international watercourses, he said the change introduced into article 7 had destroyed a compromise solution which had been arrived at after many years of work. As a result, everything depended on the notion of "due diligence", and a State could legally cause significant harm to other watercourse States provided that it did so within the limits of that "due diligence". In the current version, what counted was diligent action, a subjective element, rather than the objective element of significant harm. The new version should therefore be rejected in favour of the previous version. Regarding article 33, on the subject of the settlement of disputes, he considered it to be insufficient in the light of the importance of the draft. In addition to compulsory conciliation, it should include binding procedures such as arbitration and judicial settlement.

95. Regarding Section IV, "State responsibility", he supported the conclusions of the Special Rapporteur concerning article 19 of the draft and the consequences of the distinction between crimes and delicts. The idea underlying that distinction was that, in the case of an international crime, especially aggression, the offending State would be confronted by not only the victim State, but also the entire international community, whereupon the question would become universal instead of bilateral. That solution was in the interest of the international legal order.

96. Regarding section V, "International liability for injurious consequences arising out of acts not prohibited by law", he suggested that the expression "risk of causing significant transboundary harm", contained in article 2 (a), seemed somewhat tautologous; the definition of the term "significant" in paragraph (4) of the commentary was greatly preferable. Also, in article 17, "National security and industrial secrets", the word "vital" should be replaced by a less strong term.

97. In conclusion, he thanked all the Special Rapporteurs who had produced the reports on the various items considered by the Committee.

The meeting rose at 1.15 p.m.